This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

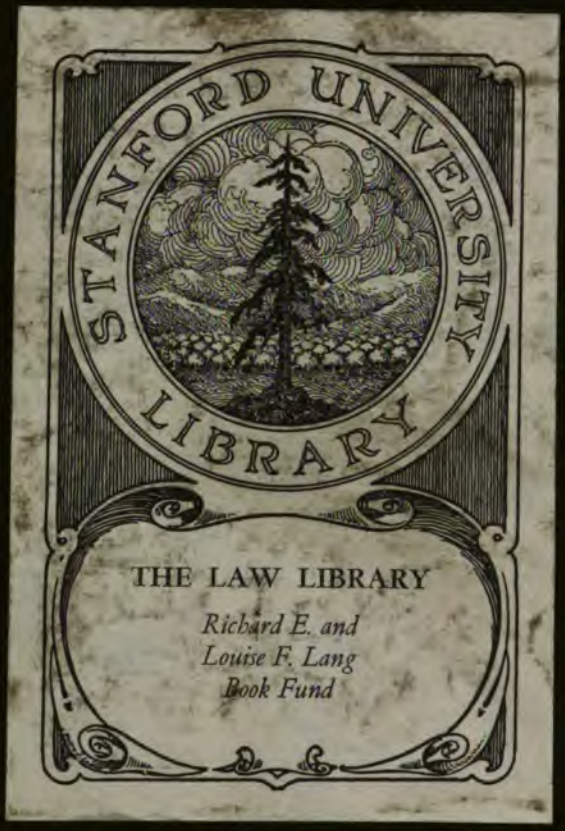
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`


STANFORD UNIVERSITY
LIBRARY
THE LAW LIBRARY
Richard E. and
Louise F. Lang
Book Fund

AP
AAX
HI+

LORD COCHRANE'S TRIAL

Walker & Boutall, ph. so.

Ellenborough

THE

TRIAL OF LORD COCHRANE

BEFORE

LORD ELLENBOROUGH

BY J. B. ATLAY, M.A.

BARRISTER-AT-LAW

LATE SCHOLAR OF ORIEL COLLEGE, OXFORD

WITH A PREFACE BY EDWARD DOWNES LAW

COMMANDER, ROYAL NAVY (RETIRED)

WITH A PORTRAIT

LONDON

SMITH, ELDER, & CO., 15 WATERLOO PLACE

1897

[All rights reserved]

PREFACE

THREE generations of Earls of Dundonald have published and republished books containing attacks on my grandfather, Lord Chief Justice Ellenborough.

Until lately I was under the impression that the contradictions to be found in their works, and the extravagant nature of the attacks themselves, carried with them their own refutation to all impartial minds.

But when I find that an historian like the Hon. J. W. Fortescue, and a novelist of the stamp of Mr. G. A. Henty, apparently believe in the truthfulness of the statements to be found in these works, and form their opinion of the conduct of my grandfather from their pages, I consider it necessary to deal with these attacks seriously.

I have therefore proceeded to make a careful examination of the contents of the books and pamphlets issued by the Tenth, Eleventh, and present Earls of Dundonald, and of the sources whence their charges against my grandfather are derived, with the view of placing before the public, a more accurate account of the Trial of Lord Cochrane and of the events connected therewith than has ever yet been published.

I have been much astonished at the results of my researches. I feel convinced that the present Lord Dundonald would never have republished 'The Autobiography of a Seaman' had he known the real origin of a large

portion of the attacks made in the 'Autobiography' upon Lord Ellenborough.

At one time I had intended to write this book myself, but I was deterred from doing so, by the innumerable legal and technical pitfalls with which I found myself surrounded, whenever I endeavoured to deal with the minutiæ of the trial; and I eventually handed over all the papers I had prepared to Mr. J. B. Atlay, of Lincoln's Inn, who kindly undertook to relieve me of my task.

I have to thank the Library Committee of the Inner Temple, for their kindness in permitting me to have access to their volumes, and my thanks are also due to the officials of the British Museum and of the Record Office for their invariable courtesy.

Edward Downes Law.

CONTENTS

CHAPTER		PAGE
I.	THE FRAUD ON THE STOCK EXCHANGE	1
II.	THE STOCK EXCHANGE COMMITTEE	27
III.	THE TRUE BILL	53
IV.	THE TRIAL—FIRST DAY	68
V.	THE TRIAL—SECOND DAY: VERDICT AND JUDGMENT	152
VI.	LORD COCHRANE'S EXPULSION FROM PARLIAMENT	193
VII.	RE-ELECTION FOR WESTMINSTER	213
VIII.	THE LETTER TO LORD ELLENBOROUGH	224
IX.	THE ATTEMPTED IMPEACHMENT OF LORD ELLENBOROUGH	241
X.	DAVIDSON'S TRIAL	256
XI.	PARDON AND RESTORATION TO RANK AND HONOURS	278
XII.	LORD CAMPBELL	296
XIII.	'THE AUTOBIOGRAPHY OF A SEAMAN'	326
XIV.	THE SELECT COMMITTEE OF 1877	368

APPENDICES

A—EVIDENCE OF STOCKBROKERS FROM GURNEY'S NOTES . . 385

B—FULL REPORT OF LORD ELLENBOROUGH'S SUMMING-UP, FROM GURNEY'S SHORTHAND NOTES 411

C—THE 'TIMES' REPORT OF LORD COCHRANE'S TRIAL . . 473

D—SIR WILLIAM GARROW'S SPEECH IN HOUSE OF COMMONS ON JUNE 24TH, 1814 516

INDEX 521

PORTRAIT OF LORD ELLENBOROUGH . . . *Frontispiece*

BIBLIOGRAPHY

THIS may be found a useful bibliography. Nearly all the works mentioned in it are in the British Museum. They are, however, by no means equally reliable.

The Fraud on the Stock Exchange: Trial of De Berenger, Lord Cochrane, and others, June 1814. Gurney. (London, 1814.)

Trial of Lord Cochrane for Escape from Prison, 17th August, 1816. Hone. (London, 1816.)

Trial of Davidson, 20th July, 1816. See 'Morning Chronicle' and 'Times,' 22nd July, 1816.

Trials of R. G. Butt for Libel, 24th May, 1817. R. G. Butt. (London, 1817.)

The Evidence given before the Lords Committee for Privileges, in 1861, 1862, *and* 1863, *on Lord Dundonald's Petition.* The printed copy at the British Museum contains the evidence, letters, and cross-examination of both George Earp and William Jackson.

The Evidence given in 1877 *on Lord Cochrane's Petition before a Select Committee of the House of Commons.*

Smith v. *Lord Cochrane; Cochrane* v. *Earl of Dundonald.* 'Law Report,' 'Times,' 1st of August, 1878.

The Calumnious Aspersions contained in the Report of the Sub-Committee of the Stock Exchange exposed and refuted in so far as regards Lord Cochrane, K.B. and M.P., the Hon. Cochrane Johnstone, M.P., and R. G. Butt, Esq. (London, 1814.) This pamphlet was published before the trial, and went through at least four editions.

The Noble Stock Jobber, by De Berenger. (London, 1816.) The circumstances under which this book was written render it impossible either to ignore it or to rely upon it.

Lord Cochrane's Letter to Lord Ellenborough. (London, 1815.)

Remarks on the Case of Lord Cochrane, by a Near Observer. (London, 1814.) The copy at the British Museum is type-written. The printed copy at Lincoln's Inn is endorsed by Sir William Garrow as being 'an excellent letter.'

There are three volumes of pamphlets on the Cochrane Trial at the Inner Temple Library, containing, amongst others, a printed copy of the 'Near Observer' pamphlet, the *Three Reports of the Sub-Committee of the Stock Exchange*, 1814–1815; *De Berenger Detected*, published by W. Jackson in 1816, which is a reply to *The Noble Stock Jobber*, and an *Answer to the Letter to Lord Ellenborough*. (London, 1815.)

Observations on Naval Affairs, by Lord Dundonald. (London, 1847.)

Review of the Case of Lord Cochrane, 1830, *as presented to King William IV.*

Various MSS. at the Record Office.

Two articles on *The Autobiography of a Seaman* published in Vols. X. and XI. of the 'Law Magazine' in 1861.

Article on *The Autobiography of a Seaman* in the 'Quarterly Review' of April 1861. Vol. CIX.

Chief Justices of England, by Lord Campbell. (London, 1857.) The mischief done by Lord Campbell's imperfect recollection of the facts of the trial is fully dealt with by Mr. Atlay in Chapter XII. of this book.

Public Characters, 1799–1809. (London.)

W. C. Townsend's *Twelve Eminent Judges*. (London, 1846.)

W. C. Townsend's *Modern State Trials*. (London, 1850.)

A Naval Career in the Old War. Markham. (London, 1888.)

Brenton's *Life and Correspondence of Lord St. Vincent*. (London, 1838.)

Memoirs of Earl St. Vincent, by J. S. Tucker. (London, 1844.)

Naval History of Great Britain, by William James. (London, 1837.)

Statesmen of the Reign of George III., by Lord Brougham. (London, 1843.)

Life of Warren Hastings, by Col. G. B. Malleson. (London, 1894.)

Warren Hastings, by Sir A. C. Lyall. 'English Men of Action' Series. (London, 1889.)

Feldzug der verbundeten Heere Europa's, 1814, by M. F. Thielen. (Vienna, 1856.)

La Campagne de 1814, par le Commandant Weil. (Paris, 1892.)

Trial of James Watson, 9th to 17th June, 1817. Gurney. (London, 1817.) 'State Trials,' Vol. XXII.

Trial of Thistlewood, 17th to 28th April, 1820. Gurney. (London, 1820.)

Trials of Hone, 18th, 19th, 20th of December, 1817. Hone. (London, 1818.)

Naval Services in Chili, Peru, and Brasil, by Lord Dundonald (London, 1859), is mostly written by Mr. G. B. Earp, and a great part of it is based upon documents written or supplied by William Jackson. See p. xxii. of its preface, and p. 168 of Vol. I. &c. Compare with their evidence before the Committee of Privileges in 1862.

The Autobiography of a Seaman, by Lord Dundonald. (London, 1860.) The manner in which this book was compiled is fully explained by Mr. Atlay in Chapter XIII.

The following five Works are either reprinted from, or are largely compiled from, the two above-mentioned books, and have in consequence but little historical value :—

Life of Lord Cochrane, 10th Earl of Dundonald, by the 11th Earl and Mr. Fox Bourne. (London, 1869.)

The Autobiography of a Seaman, and Sequel, published by the present (12th) Earl. (London, 1890.)

Life and Exploits of Lord Dundonald.

Allen's *Life of Lord Dundonald.* (London, 1861.)

Dundonald. 'English Men of Action' Series, by the Hon. J. W. Fortescue. (London, 1895.)

Future historians should compare them with the following :—

Basque Roads—

The Trial of Lord Gambier. Gurney. (Portsmouth, 1809.)

Lord Gambier's Memorials, edited by Lady Chatterton. (London, 1860.)

An Admiralty Chart of Basque Roads, dated 1829, at the United Service Institution. In comparing the conflicting accounts, a pair of compasses and a scale will be found useful, as the *Trial of Lord Gambier* and the *Autobiography of a Seaman* contain charts which are not in agreement with one another.

South American Career—

Compare with W. R. Stevenson's *Twenty Years in South America.* (Liverpool, 1825.) Stevenson was at one time Secretary to Lord Cochrane and was an admirer of his.

The following three Spanish pamphlets in the British Museum, which have been hitherto overlooked, are well worthy of attention:—

J. de San Martin's *Manifesto de las Acusaciones . . . contra Lord Cochrane.* (Lima, 1823.)

Vindicacion de Lord Cochrane. (Lima, 1823.) The *Vindicacion* is Lord Cochrane's answer to the *Acusaciones.* It is signed by him, and is the more interesting of the two.

J. L. Zenteno's *Documentos justificativos*, and *Refutacion de las memorias de Lord Cochrane* (Santiago, 1861), is written in answer to Lord Dundonald's *Chili and Peru*, and will repay the trouble of perusal.

The accounts given of Lord Cochrane's adventures when in the Greek service should be compared with—

Finlay's *History of the Greek Revolution.*

Stanley Lane Poole's article on Sir Richard Church, reprinted in 1890 from the English 'Historical Review.'

Tricoupe's Σπυριδώνος Τρικουπῆ Ἱστορία τῆς Ἑλληνικῆς Ἐπαναστάσεως.

The previously quoted article in 'Quarterly Review.' Vol. CIX.

Correspondence respecting Greek Steam Vessels, by A. Luriotis, 1827.

Refutation of calumnious statements concerning the late Alexander Galloway, Esq., C.E., contained in the Earl of Dundonald's book entitled *Life of Lord Cochrane*, by R. H. Galloway. (London, 1871.) It may be of interest to note that Mr. Galloway's name does not appear in the sequel published by the 12th Earl in 1890.

EDWARD DOWNES LAW.

LORD COCHRANE'S TRIAL

BEFORE LORD ELLENBOROUGH

CHAPTER I

THE FRAUD ON THE STOCK EXCHANGE

THROUGHOUT the long epoch of the French Revolutionary wars it may safely be said that no period was more fruitful in vicissitudes and surprises than the first three months of 1814. The year had opened with the gloomiest auspices for France. The English had established their foothold in the south; on her eastern borders the hordes of the north had crossed the Rhine and were pressing into the fair province of Champagne. Her treasury and arsenals were denuded, her armies existed only on paper, and during the early weeks of the new year resistance seemed dead, as Marmont and Macdonald, Victor and Ney fell sullenly back before the enemy, and the inhabitants of the invaded districts remained passive and inert.

It was not until the 25th of January that Napoleon was able to quit Paris, where, with feverish activity, he had been striving to make good the losses of the two preceding years; and even when he took the field in person, it seemed for a moment that the spells of the great magician had lost their power. The barren victory of Brienne was followed by the scarcely disguised defeat of La Rothière, and as the Emperor evacuated Troyes in gloomy silence, it looked as if the end were only a matter of days. The conscripts deserted by hundreds, the veterans fumed with

rage and despair, while the officers of the Allied Armies made up dinner parties for the Palais Royal. One chance alone remained to Napoleon, and for that he had not long to wait. On the 6th of February the armies of Blucher and Schwartzenburg parted company; on the 7th the Emperor had prepared his plan of campaign, and between the 10th and 14th he had inflicted four successive defeats on the army of Silesia. In the course of the next few days another series of startling victories had been gained over Schwartzenburg and the Russo-Austrian forces, and on the 23rd of February, Napoleon, once again in front of Troyes, saw the allied host, still vastly superior in number, refuse the proffered battle, and retreat through the town.

But fortune had exhausted her gifts. During the eighteen days, between the 8th and the 26th of February, it was more than probable that Napoleon would win; from the latter date till the capitulation of Paris on March the 30th, the tide ran steadily though not uninterruptedly against the French. All the resources of consummate skill and brilliant audacity were expended. The blundering strategy of Blucher and the calculated lukewarmness of Schwartzenburg assisted in delaying the ultimate triumph of the Allies, but every victory of Napoleon served only to drain the life-blood of France. The enemy retreated before the Emperor and the Old Guard, but few gleams of success attended the conscript battalions and the marshals. Feeling that such a campaign could have only one end, Napoleon gathered his forces for a supreme effort. Breaking off the negotiations of Chatillon, and leaving the road to Paris free, he flung himself on the rear of the Allied Armies, intending at one stroke to cut their communications, and to gather up his own much needed reinforcements from the garrisons of the Eastern fortresses. The stroke failed, the Allies pressed on to Paris, and its capitulation after a fierce resistance was followed by the abdication at Fontainebleau and the exile to Elba.

It would be waste of words to say how eagerly the closing stages of the strife were followed in England. It is true our coasts and liberties were safe, and we had no

such tremendous stake at issue as our continental allies, but twenty years of war by land and sea had filled the nation with a longing for peace, while the constant demands on our resources in men and money were combining to render it almost a necessity. Up till the very end the issue seemed doubtful to the most close observers; the events leading up to the rupture of the Congress of Chatillon on the 18th of March caused little short of a panic, and during that fortnight in February, when every day brought rumours of a French victory, it looked as though the work of the campaigns of Moscow and Leipsic had been done in vain. The experience of twenty years had rendered the public mind familiar with the principles of strategy; Napoleon's warlike achievements—Marengo and Austerlitz, Jena and Wagram—were still fresh in men's minds, and when it was known that the great captain occupied a central position between two opposing armies, and might at any moment be operating against their straggling line of communications, no wonder if news from the continent was awaited with feverish anxiety.

This feeling is well reflected by the press of the period. The news of Napoleon's first reverses seems to have reached London about Thursday, the 10th of February. On that day the 'Courier,' in its half-past one edition, records a rise in the funds:—

> The moneyed market is in the greatest bustle. Omnium has been done as high as 29½ and the Consols at 69; but there are few sellers, the stock and Omnium holders will not part with their stock. There are abundance of rumours, none of which we can trace as yet to any authentic source. Some say that Bonaparte has been killed in battle, others that he has been assassinated; that Paris is surrounded by the Allies, who have not suffered the troops to enter it; that the Senate is in treaty with the Allied Sovereigns.

The issue of the next day (Friday, the 11th) says that the character of the intelligence in the French papers of the 8th is of a mixed nature:—

> Rumours and the great rise in the funds had prepared the public mind for information of the most decisive kind—no less

decisive than the utter ruin and extermination of the tyrant. Our readers will see how ill-founded these rumours were; yet the intelligence in these papers as far as it relates to military operations is of the most favourable kind. Bonaparte continues to be unable to make head against the Allies; he has again been beaten, and been obliged to retreat nearly thirty miles.

The most favourable feature in the situation is held to be the junction of Blucher and Schwartzenburg. The battle of La Rothière on the 1st of February is correctly surmised to have been a signal defeat to the French, and the Allies are reported to be between Nogent and Paris, and advancing rapidly on the capital. On Saturday, the 12th, there are comments on the arrival of a messenger with a flag of truce from the continent, bringing news of the formal opening of the Congress of Chatillon, and that a great battle had been anticipated in Paris when the messenger left. 'There was a firing on the French coast yesterday (the 11th) at midday. The cause of it has not transpired.' But it was said to be attributed by well-informed people at Deal to some counter revolution having actually taken place in France.

This hope, however, was speedily dissipated, for on Monday, the 14th, the 'Courier' has to announce, on the strength of a Dover letter, that a fishing boat spoken off St. Valéry told that there were rejoicings on Friday night and on Saturday at Boulogne and Calais for a great victory gained by Bonaparte. The 'Times' of the same morning, after dwelling on La Rothière and the loss of Napoleon's cannon, goes on to say that, with the reinforcements which he had received from Soult and Suchet

> The tyrant will try his last stake. The firing, which was heard on Friday along the French coast, may have been in consequence of some engagement in which fortune has been less unpropitious to him than of late. A trifling success would doubtless be swelled into an important victory.

But in later editions that afternoon the 'Courier' published a telegraph despatch transmitted from Paris to Boulogne, stating that—

The day before yesterday, February 10th, the Emperor completely defeated a Russian Corps near Gezan (*sic*). The general was taken and his staff, 40 cannon, 6,000 men, all the caissons, the baggage and material. Yesterday, the 11th, the Emperor completely defeated and put to rout the corps of General Sacken, from whom he has taken 50 pieces of cannon and 10,000 men. The French funds have risen 8 or 4 per cent.

In its issue of Tuesday, the 15th, the 'Times' strove to belittle this intelligence :—

Yesterday, as might have been expected, was productive of a thousand rumours, and as the stocks have of late been rising rapidly, we suppose the fabricators of intelligence thought it a proper time to depress them. The reports were therefore of an unfavourable cast, and it was even pretended that news had arrived of two successive victories of Bonaparte.

It refuses to credit the defeat of Sacken, but admits that the French may have had some partial victories, magnified reports of which may have caused rejoicings along the coast. On the 16th (Wednesday), a date the importance of which should be noted,[1] the same paper admits that it cannot withhold its assent to the statement that some disadvantage has attended the 'hitherto unchecked and unchequered fortune of the Allies.' On Thursday, the 17th, it remarks that—

The fluctuation of the stocks yesterday was very considerable. The most reasonable hope which the present state of affairs presents is that the tyrant may fall in battle, and that the dispersion of his troops may leave it open to Louis XVIII. to ascend the throne of his ancestors without opposition.

Later in the same day the 'Courier' announced the arrival of Paris papers of the 12th, 13th, and 14th, from which it appeared that there had been a battle near Château-Thierry, in 'which the French claimed a victory, and stated that they had taken 6,000 prisoners and 30 guns.'

That this was confirmation enough and to spare even the optimistic 'Times' could not deny, and in the leading article of Friday, the 18th, it proclaimed that—

[1] See the Trial of Lord Cochrane, p. 142, *inf.* p. 96.

A more critical period perhaps never occurred in the annals of modern warfare than that to which the French papers just received relate. They are to the 15th instant, and they contain notices of Bonaparte's military operations, which have doubtless been attended with immediate success, although it may well be doubted whether they may not eventually involve his inextricable ruin. . . . Whatever may be the fate of Blucher's army, and whatever portion of it may have been implicated in these engagements, a question of still greater importance remains to be solved, on which the present journals afford us no light whatever. How has the grand army of Schwartzenburg occupied itself during the time that Bonaparte has been manœuvring on the Marne?

The second edition of that day's 'Courier' brought news of Napoleon's victory at Montmirail, and on the morning of Saturday, the 19th, the 'Times,' commenting on it, said:—

Without pretending to develop the exact state of circumstances, critical and momentous as they are, and consequently liable to so much misrepresentation according to the fears, hopes, and interests of the narrators, we think it evident that, if Bonaparte has remained for six days together in the neighbourhood of Montmirail with the chief part of his force, he must in fact have abandoned Paris to its fate.

With this it is interesting to compare the 'Courier' of the same day:—

We believe it will be found, when our own dispatches arrive, that there has been continual and severe fighting between Blucher's army and Bonaparte's; that Blucher is doing as he did when Bonaparte was on the Elbe, viz., forcing him to direct his attention to his movements in another quarter. It is probable that the object of Blucher was to keep Bonaparte from approaching Paris nearer than Nogent, Montmirail, or Château-Thierry. Bonaparte must have been recalled from between Château-Thierry and Soissons, where he was on the 13th, to Montmirail by the approach of another army from Chalons, or by the advance of Wintzingerode from the north, which reduced him to the necessity of falling back. The natural question which all persons will ask is what the main army under the Prince Schwartzenburg was doing during these operations upon Blucher's line?

It may also be noticed that this paper contains a report of the Cossacks having been seen at Lagny, about fifteen miles from Paris. These extracts will show with what keen and intelligent criticism the movements of the armies were followed. The reading and the investing public were made fully aware of the fact that Napoleon and the main body of the Allies now stood face to face. No one could dare to predict the result; four-and-twenty hours might bring the most momentous news, the final rout of the Emperor or the retreat of his enemies towards the Rhine. No news reached London on the Sunday, and the papers of the 21st must have been awaited with the deepest anxiety.

Early that morning some inhabitants of Dover who were sitting in the parlour of the 'Packet Boat' public-house were aroused by the sound of knocking. The landlord went out, and by the dim light descried a gentleman standing at the door of the 'Ship Inn' opposite, and trying to gain admittance. Sending for candles, he had an opportunity of examining him closely, and found him to be attired in a red military uniform with a grey great coat. The boots opened the door of the 'Ship'; the stranger walked in and demanded an express horse and a man to send to the Admiral at Deal. He said he had just been landed on the beach from France with the most important despatches that had been brought to the country for these twenty years; he must have a post-chaise and four, and, in the meantime, pen, ink, and paper.

He was taken upstairs to a sitting-room. The landlord, Mr. Wright, was roused, and the stranger, after calling for refreshment, was beginning to write, when Marsh, the keeper of the 'Packet Boat,' who had followed him upstairs, asked if he should call the collector of the port, whose business it was to see such people when they landed. The stranger replied that his business did not lie with collectors. By this time Wright had come down, together with some of the other inmates, who had been aroused by the knocking, and they all came to the parlour where the stranger was accommodated. The light of candles revealed to them a gentleman wearing a scarlet uniform

coat with long skirts buttoned across, a red silk sash, grey pantaloons, and a fawn-coloured fur cap with a gold band. On the red coat were some ornaments, a star, and a medallion. The gentleman was not communicative, and seemed anxious for the messenger and the post-chaise. A boy was accordingly knocked up, a letter was handed to him, and he was sent off to Deal with instructions to deliver it into the hands of the Port Admiral himself.

About three o'clock in the morning Admiral Foley, the officer in command at the Downs, was awakened from his slumbers, the messenger was brought up to his bedroom, and a letter couched in the following terms was handed to him:—

To the Honourable T. Foley,
Port Admiral, Deal, &c. &c. &c.

Dover, One o'Clock A.M.,
February 21st, 1814.

SIR,—I have the honour to acquaint you that the *L'Aigle* from Calais, Pierre Duquin, Master, has this moment landed me near Dover, to proceed to the capital with dispatches of the happiest nature. I have pledged my honour that no harm shall come to the crew of the *L'Aigle*, even with a flag of truce they immediately stood for sea. Should they be taken, I have to entreat you immediately to liberate them. My anxiety will not allow me to say more for your gratification than that the Allies obtained a final victory; that Bonaparte was overtaken by a party of Sacken's Cossacks,[1] who immediately slaid (*sic*) him, and

[1] This story was strangely near the truth, and, as a matter of fact, Napoleon was within an ace of falling a victim to the Cossacks on the 29th of January. Writing of the events of 1814, Alison says (9th edition, c. lxxxv. s. 17): 'It is a remarkable circumstance, characteristic of the desperate chances of the death struggle which was commencing, that at the very time when Blucher and Sacken so narrowly escaped being made prisoners, Napoleon himself was still nearer destruction; and a Cossack's lance had all but terminated the life which still kept a million of armed men at bay. The bulk of the French army was bivouacking in the plain between Maizière and Brienne, and the Emperor, after having inspected their positions, was riding back, accompanied by his suite, to the former town, in earnest conversation with General Gourgaud, when General Dejean, who commanded the patrol in front, suddenly turned, and cried aloud, "The Cossacks!" Hardly were the words spoken, when a party of these enterprising marauders dashed across the road. Dejean seized

divided his body between them. General Platoff saved Paris from being reduced to ashes. The Allied Sovereigns are there, and the white cockade is universal, and immediate peace is certain. In the utmost haste, I entreat your consideration, and have the honour to be,

Sir,

Your most obedient humble Servant,

R. Du Bourg,

Lieut.-Colonel and Aide-de-Camp to Lord Cathcart.[1]

To the Honourable T. Foley,
Port Admiral, Deal, &c. &c. &c.

Admiral Foley questioned the messenger at some length, and was not at all convinced of the genuineness of the news contained in the letter. It was, however, obviously his business to communicate the contents to the

the foremost, and strove to plunge his sabre in his throat. The Cossack, however, disengaged himself, parried the blow, and continuing his career, made with his lance in rest at the horseman with the cocked hat and grey riding coat who rode in front. A cry of horror arose in the Emperor's suite. Corbineau threw himself across the lancer's path, while Gourgaud drew his pistol and shot him dead, so near Napoleon that he fell at his feet.'

But this was not Napoleon's first acquaintance with Cossack audacity. He had had a still narrower escape from them at the beginning of the retreat from Moscow, and the story was probably known in England at this time. It has been told by many writers; amongst others by Marbot (vol. iii. p. 149), and Ségur (vol. ii. p. 128); but I prefer to give it in the words of Baron Le Jeune (*Mémoires*, vol. ii. p. 237):—"Le 24 octobre, l'Empereur cheminait à cheval avec le premier corps et sa garde en grande sécurité, lorsque l'on aperçut, au loin sur la gauche, un corps considérable de cavalerie, que l'on prit au premier abord pour les troupes de Murat. L'incertitude ne fut pas longue. Platoff, célèbre hetman des Cosaques, avait promis à Kutusoff d'enlever Napoléon; il fondait à l'improviste sur la partie de l'armée francaise qui, de loin, lui paraissait être le quartier impérial. Il ne se trompait pas, et dans un clin d'œil, Napoléon fut entouré de Cosaques et foroé de mettre l'épée à la main. Fort heureusement, l'Empereur se trouvait au milieu d'hommes dévoués qui se serraient autour de lui et parvinrent a le préserver du choc de ces barbares. Le général Rapp, occupé a entraîner l'Empereur, fut renversé dans la mêlée avec son cheval traversé par une lance. Plusieurs officiers furent blessés autour de l'Empereur. Mais la garde à cheval, promptement remise de ce premier moment de surprise que lui causaient tant d'audace et tant de cris, tailla de rude croupières à cette horde de Cosaques, qui prit aussitôt la fuite.'

[1] Lord Cathcart had been, since May 1813, Ambassador to the Court of Russia, and British Military Commissioner at the headquarters of the Czar.

authorities in London. News of importance was generally transmitted by the old cumbrous semaphore telegraph;[1] but, when daylight came, the thickness of the weather rendered this impracticable, so he contented himself with sending it to Mr. Croker, the Secretary of the Admiralty, enclosed in a private communication of his own.

Long before the original letter had reached the Admiral the mysterious stranger whom we know for the present as Colonel Du Bourg was well on his way to London. The chaise and four had been supplied at last, and the Colonel offered to pay with gold Napoleons, as became a traveller just arrived from France. Gold was none too common in England then, and one would have thought that the landlord would not have been averse to payment in specie, but something deterred him, whereupon the stranger produced some one-pound Bank of England notes, and then the postboys started out into the dark along the London road. The first stoppage was at the Fountain Inn at Canterbury, where horses were changed and the boys rewarded with a Napoleon apiece. The next stage was to the Rose at Sittingbourne, and thence to the Crown at Rochester, and here, as all along the route, the payments were made in the same gold coinage. It was about half-past five when Rochester was reached, and Colonel Du Bourg went into the parlour to get something to eat and to warm himself. There the landlord, brother of the Mr. Wright of the Ship Inn of Dover, had some conversation with him, from which it was clear that the Colonel had been forestalled, and that advantage had been taken of the delay at Dover for some other messenger to be beforehand with him. Before a word had been exchanged the landlord asked if he might be allowed to know the nature of the despatches, and Colonel Du Bourg was good enough to gratify him.

[1] The semaphore telegraph, clumsy though it seems to us, could transmit news from the coast to London in less than half an hour (Trial, p. 453): its final station was on the roof of the Admiralty, then occupied by John Wilson Croker as his official residence. Readers of 'Monte Cristo' may remember the chapter where a false message sent by the semaphore is made to play a part in the Count's great scheme of revenge.

There had been, he said, a very general battle between the French and the whole of the Allied Powers, commanded by Schwartzenburg in person. The French had been completely defeated, and Bonaparte had fled for safety. He had been overtaken, however, at a village six leagues from Paris by the Cossacks, who had come up with him and had literally torn him to pieces. He, Du Bourg, had himself been present as an aide-de-camp at the battle, and had been despatched from it by the Emperor Alexander. The Allies had been invited to Paris, and the Bourbons to the throne of France.

Wright noticed his staff officer's uniform with the star and a medal, the latter of which Du Bourg informed him was the decoration of a Russian military order; and he also observed that on his dress was a large white cockade, the emblem of the Bourbons, soiled and dirty, as if it had been a long time worn.

From Rochester the chaise drove to the Crown and Anchor at Dartford, and here again the landlord was on the alert, for he came out to the chaise and made his obedience to its inmate, expressing the hope that he was the bringer of good news. Du Bourg replied that he was, and that it was all over. The Allies were in Paris, Bonaparte was dead, destroyed by the Cossacks, and literally torn in a thousand pieces; the Cossacks had fought for a share of him as if they were fighting for gold. The country might expect a speedy peace.

From Dartford to London was the last stage in, and day was now beginning to break. It was a thick and frosty morning, and at Bexley Heath Du Bourg told the postboys not to hurry the horses, for he thought the telegraphs could not work; and during the rest of the journey he was on conversational terms with them, giving them the remainder of a bottle of Madeira, and asking them to say nothing of the news until their return, when they might spread it as they liked. When they had got past Shooter's Hill he inquired where the first hackney coach stand was. He was told that the Bricklayers' Arms was the first, but he said that that was too public, and that somebody might

cast some reflections. He asked if there was not one in Lambeth Road, and thither they drove, only to find that there was no coach on the stand. On trying the Marsh Gate, however, they were more fortunate. A solitary coach was there. The chaise was drawn up alongside; Du Bourg stepped in, rewarded the postboys, ordered the coach to drive to Grosvenor Square, and was speedily out of sight.

This was a little before 9 A.M., but, as we have seen, there had been others in the field before Du Bourg, with the glad tidings of victory and peace. The Stock Exchange was then, as now, the pulse of London, and when that institution opened at ten o'clock the rumour of the Dover intelligence was not long in producing its effect.

One of the most remarkable features of modern civilisation is the vast increase of the ways in which people of a speculative turn can invest or hazard their money. A glance down the City columns of a morning paper reveals 'regions Cæsar never knew.' Railways, gas, electric lighting, cycles, and aerated bread were obviously unavailable for gambling purposes in the year before Waterloo, and the full potentialities of joint stock enterprise were unknown. The speculator on the Stock Exchange found himself practically limited to Bank and India Stock and the Government securities—represented by 3 per cent. Consols, 3 per cent. Reduced, the 4 per cents, and the 5 per cents. Besides these, however, there was a mixed investment known as Omnium, a word at one time synonymous in our literature with wealth, and a favourite cant term of the day, but the very memory of which only lingers on in old Bank ledgers and in the pseudonym of a once well-known contributor to the 'Times.'[1] The purchaser of 100*l.* Omnium had the right of receiving a certain amount of Reduced and a certain amount of Consols; this stock was always quoted at a premium varying from day to day (though the stocks of which it was composed were in

[1] It was to commemorate an episode in the career of this gentleman (the late Matthew James Higgins) that Thackeray wrote his Ballad *Jacob Omnium's Hoss.*

reality both at a discount), and as it was more sensitive than either of its component parts, it was the favourite investment of those who merely made 'time bargains,' and whose habit was to buy vast quantities of stock, which they might dispose of at a profit or a loss, but which they had neither the wish nor the power to purchase outright. In fact, Omnium may be looked upon as a sort of Brighton A, always at a premium.

All through the month of February the Funds had, with occasional variations, been going steadily up. On Monday, the 7th, the Consols were at 66½; by the end of the week they were at 71⅜, and during the following week the fluctuations were even more marked. They had been as high as 72 on the 14th, but there had been a decline, and when the Stock Exchange closed on the afternoon of Saturday, the 19th, they were at 70¼, and had been as low as 70 on that day. The vicissitudes of Omnium over the same period had been greater. On Monday, the 7th, it had started at 19⅛ premium. On Thursday, the 10th, it reached 28½, and on Saturday, the 12th, left off at 28¾.[1] In the following week, however, disturbed by rumours of French victories, there had been a marked decline. On Thursday, the 17th, it had been down to 25, and though the next two days saw a recovery it closed on Saturday, the 19th, at 26⅞ premium.

When the house opened at 10 o'clock on Monday, the 21st of February, the news from Dover had already begun to work, and though Consols opened at 70½, and Omnium at 26⅛ for money, as the morning wore on and the tale of the staff officer and his despatches spread, the market went up by leaps and bounds, and Omnium soon stood at a premium of 30¼.

This, however, was not attained without a check. When, towards twelve o'clock, it was known that no verification of the truth of the news had been received by the Lord Mayor, doubts as to its authenticity began to spread, and Omnium began to fall. The fall was speedily arrested by

[1] The news of La Rothière, fought on the 1st of February, had sent it flying up.

the arrival of a striking confirmation of the peace rumours. There came over London Bridge a post-chaise and four, the horses decorated with laurels, and in it three gentlemen dressed as French officers with white cockades in their hats. The *cortège* passed through the City down Lombard Street, along Cheapside, and over Blackfriars Bridge. As they went along the occupants of the chaise scattered little paper billets inscribed with 'Vive le Roi! Vivent les Bourbons!' This seemed to give the stamp of certainty; the downward tendency was checked, and Omnium touched 32.

Still there were some hard-headed, incredulous people who would not be convinced, and about 1 o'clock messengers were sent to the Government offices; there it was discovered that no confirmation of the reported death of Bonaparte had been received, and that the whole affair was a fraud. Then ensued the inevitable fall. Omnium sank gently to 30 and rapidly to 28. Even so it left off one and a half per cent. higher than it had opened. The next morning it was down to 27⅜, and by the Tuesday afternoon it was back to 26½, its original price before it was disturbed by Colonel Du Bourg.

The sudden rise had given occasion to a vast number of bargains in Omnium; those who had sold on the Monday had been large winners, and those who had bought had lost proportionately. A similar fate had befallen those who dealt in Consols, which had opened on the Monday at 70½, and had risen as high as 71⅞. On Tuesday morning they were down to 70. The Stockbroker of the Accountant-General of the Court of Chancery, who on the Saturday had bought Consols for the Court at 70, was compelled to purchase on the Monday at 71⅝ per cent.[1]

[1] In giving these figures I have followed the prices in the *Times*, together with the evidence of Steers, the broker to the Accountant-General, and Wetenall, the official price-taker to the Stock Exchange. The *Courier* gives the prices of Omnium that Monday as 28¾, 27½, 29½, 30, 32½; Gurney in his speech at the trial says that Omnium opened at 27½, that it began to rise about 10.15 and went up to 28–28½–29–30, then declined to 29, and on the procession through the City rose again to 30–31–32–32½. The *Courier* and Mr. Gurney seem to give the 'time' instead of the 'money' price, but even so the two sets of prices are conflicting. See Trial, pp. 23, 188, 196.

Apart from the barefaced nature of the fraud, perpetrated at a time when the extreme tension of men's minds rendered them especially sensitive to the wilful dissemination of false news, there had been heavy pecuniary losses, and if the reports of the day are to be believed these losses had fallen not so much on the ordinary speculator as on the outside public. A curious contemporary work tells us that at that time the great financiers who controlled the stock markets had their own sources of information, better and more expeditious than any Government messenger, and the crafty men of business knew well that the first intimation of such important news as the death of Bonaparte would not have been conveyed by a staff officer from Dover. A series of preconcerted signals worked from the French coast by means of fishing boats would have flashed the news, and specially prepared relays of horses, or perhaps carrier pigeons, would have brought it to London long before any colonel or enterprising news agent. Consequently the experienced hands stood aloof, while the outside public, to whom the story of the staff officer with his scarlet uniform and medal and star carried full conviction, rushed in to their undoing.[1]

The Bank, The Stock Exchange, etc. An exposé touching their various mysteries, p. 89.

No wonder, then, that a chorus of execration against the Stock Exchange and all its works rose high, that the press raved against the 'infamous imposition,' and that the 'Times,' in its leading article of Tuesday, February the 22nd, after denouncing the 'fraud of the most impudent and nefarious description,' went on to say :—

Great exertions will, no doubt, be made by the frequenters of the Stock Exchange to detect the criminal. . . . If his person should be recognised he will probably be willing to save himself

[1] The excitement produced by the news of Napoleon's death was not confined to the metropolis. In a letter to the first Lord Auckland on March 3rd, 1814, a correspondent writes that 'the postmaster at Aylesbury with some well-chosen neighbours went to Hartwell House' (the residence of Louis XVIII.), 'as soon as the late stock-jobbing fabrication arrived. They were received by the poor King himself, who shook hands with them, invited them to France, filled them with wine, and so on, till they had a sort of foresight of their public entry into Versailles. Their disappointment was as great as the King's.'—*Journal of Lord Auckland*, vol. iv. p. 408.

from the whipping-post by consigning his employers to the pillory, an exaltation which they richly merit, and which, if indicted for a conspiracy, they would doubtless attain.

The Stock Exchange was on its trial, and its authorities lost no time in their endeavour to get at the circumstances attending the fraud and to clear their members from the suspicion of having been parties to it. On the Tuesday morning following the arrival of Colonel Du Bourg at Dover the Committee of the Stock Exchange met and appointed a sub-committee to inquire into what was now generally described as 'the hoax,' and, if possible, to detect and bring to justice the principals and agents implicated.

A large number of witnesses were examined before them, and as the firstfruits of the investigations a notice was posted up in the 'house' on the 4th of March requesting that

all those members of the Stock Exchange who transacted business either directly or indirectly for any of the persons undermentioned on Monday, the 21st of February last, would favour the Committee with an interview.

The names given were those of the Hon. Cochrane Johnstone, Mr. R. G. Butt, Lord Cochrane, Mr. Holloway, Mr. Sandom, and Mr. M'Rae. And at the same time a reward of 250*l.* was advertised for the discovery of Colonel Du Bourg.

Thomas, Lord Cochrane, whose name was thus brought into such unpleasant prominence, was the eldest son of the ninth Earl of Dundonald, and one of the most successful seamen of his day. Born in 1775, he was now in the prime of life, and equally well known in the navy, in Parliament, and in society.

The Cochranes were an ancient Scotch family whose estates had gradually dwindled, and the ninth Earl of Dundonald was not the man to restore the failing fortunes of a house. Living in times of invention and discovery, and himself devoted to scientific pursuits, he had thrown up a naval career and turned to applied science, with the

hope of thereby acquiring the means to buy back the ancestral acres. Full of ingenuity, often on the verge of some discovery of practical utility, he was always either just anticipated, or else brought up short in his experiments by want of the necessary capital. Nothing prospered under his hands, and the death of his wife left him with a family of young children, and with his circumstances in a state of hopeless embarrassment.

Lord Cochrane was originally destined for the army, and had received a commission in the 104th Foot at the age of fourteen, but his uncle, Captain, afterwards Sir Alexander, Cochrane, had at the same period prudently entered his name on the books of the vessel under his command, and consequently when the future admiral had reached the age of seventeen and a half, and had decided that his vocation was for the navy, he was of sufficient standing to join the ship of another uncle as one of the senior midshipmen. To the want of all preliminary training (for his education had been a private one), and of the useful discipline of the midshipmen's mess, so graphically described in Captain Marryat's novels, may be attributed many of the misfortunes of Lord Cochrane's subsequent career. To quote the 'Autobiography of a Seaman,' 'a tall fellow, over six feet high, the nephew of his captain, and a lord to boot, were (*sic*) not very promising recommendations for a midshipman.' Vol. i. p. 51.

Joining the navy at the commencement of the revolutionary wars, his career from the time he attained to independent command was a series of remarkable triumphs. In the diminutive brig *Speedy*, with a crew of fifty-four men, he boarded and captured the Spanish frigate *El Gamo*, vastly superior in tonnage, armament, and crew; and during the fourteen months of his cruise in the *Speedy* he took, burnt, and destroyed an extraordinarily large number of armed vessels. She was, however, unfortunately captured in July 1801, and Lord Cochrane found himself for a few days a prisoner of war. His services in his subsequent commands of the *Pallas* and the *Impérieuse* were no less brilliant.

In the spring of 1809 Lord Cochrane's last feat of arms under the British flag was performed at Basque Roads, with the aid of a flotilla of fire ships, when, in order to avoid those dreaded engines, a large number of the French ships were run on shore and destroyed. Into his controversy with Lord Gambier and the subsequent court-martial I have no desire to enter, but Lord Cochrane's share in the victory was acknowledged by the Order of the Bath being conferred on him.

Few men have effected so much with such small means. 'In war his dashing courage in execution was, if possible, surpassed by the fertility of resource and ingenuity of device by which he deceived his enemy, and it was by these means that he obtained some of his most striking successes.' He was a past master of ruse and stratagem. What he would have done had he ever commanded an English fleet on active service it is impossible to predict, but the peculiarities of his temper and disposition rendered him an almost impossible subordinate. He was one of those strange men who are never without a grievance, and whose mental constitution renders it impossible to do justice to any one who differs, however conscientiously, from them.

'Autobiography,' vol. i. p. 179.

As far back as 1806 Lord Cochrane had entered Parliament as member for Honiton. The amusing account of his election, given in the 'Autobiography of a Seaman,' is by no means in accordance with the story as told by Lord Cochrane himself in the House of Commons. There is an equally amusing version to be found in a contemporary publication, which, though quite in agreement with Lord Cochrane's own statements in the House, is also at variance with the account in the autobiography. At the general election of the following year he was returned for Westminster, then probably the most Radical constituency in the kingdom, and he flung himself into politics with the same ardour which he displayed in the naval profession and in his scientific pursuits.

See debates, Jan. 29, Feb. 5, May 15, 1817; Hansard, vol. xxxv. pp. 92, 221; vol. xxxvi. p. 600.

Public Characters 1809–1810, p. 297.

It would be foreign to the purpose of this book to examine in any detail his Parliamentary career, were it not for the fact that in the 'Autobiography of a Seaman' his

prosecution and sentence are attributed to the vindictiveness of a Government anxious to rid themselves of a formidable critic and opponent. This legend has been so often repeated and so sedulously propagated as to win universal acceptance, and it is not until the glowing pages of the 'Autobiography' are contrasted with the cold grey light of Hansard that a proper appreciation of Lord Cochrane as a reformer and a member of Parliament can be attained.

Lord Cochrane is represented as having been a much-injured and neglected man, whose depression, long before the great catastrophe of the Stock Exchange trial, was a main object with those in authority. An examination of his career and services lends little countenance to this, and, indeed, makes it rather hard to see what Lord Cochrane had to complain of. By counting his nominal service gained while still on shore in the schoolroom, he had become a lieutenant within less than eighteen months of first joining a ship. In four years more he had gained another step in rank, and was put in command of the *Speedy*, which gave him the opportunity for distinction and for obtaining prize money, which he so brilliantly seized upon. After a short interval Lord Melville, at the request of the Marquess of Hamilton,[1] placed him as captain of the *Pallas* in the happy hunting-grounds off the Western Islands. That cruise of a few months is said by Mr. Allen, one of Lord Cochrane's biographers, to have brought him in over 70,000*l.* prize money. If the routine of the service prevented the young captain's promotion over the head of his seniors, he was placed by the Admiralty, in the attack on the French fleet in the Basque Roads, in a position of such prominence as to cause no little dissatisfaction among the senior and highly distinguished officers whom he virtually superseded. 'The preference given him over every officer then serving in Lord Gambier's fleet for the direction of so hazardous and so important a service implied the recognition of his past exploits as the strongest guarantee for his right judgment and his brilliant execution.' At a period when the English navy abounded with

'Autobiography,' vol. i. p. 65.

'Quarterly Review,' vol. cix. p. 390.

[1] See *Observations on Naval Affairs*, 1847, p. 43.

men of tried courage and capacity, when many a brilliant deed lost immortality for lack of a *vates sacer*, and gallant men languished in obscurity for want of opportunity of distinction, it can hardly be contended that Lord Cochrane suffered more than others the penalty of neglected merit.

For his services at the Basque Roads he was, as we have seen, decorated with the Order of the Bath, an almost unprecedented distinction for any one below the rank of admiral, and, whatever may be thought of the merits of the controversy between him and Lord Gambier, his refusal to concur in the Parliamentary vote of thanks to his commander-in-chief shows a lack of loyalty and generosity which a 'Quarterly' Reviewer aptly contrasts with the conduct pursued by Sir Arthur Wellesley towards Sir Harry Burrard after the Convention of Cintra. An earlier episode in his career, when he took the opportunity of flagrantly insulting Lord St. Vincent in the course of an application for the promotion of one of his officers, had shown the same incurable lack of the disciplined mind and the regard for superiors which is the essence and primary condition of armed service.

'Quarterly Review,' vol. cix. p. 890.

Cf. 'Dict. of National Biography,' *s.v.* 'Dundonald,' with 'Autobiography,' vol. i. ch. vii. p. 146.

It is quite possible that with such a record he may not have been popular at the Admiralty, but of any deep-rooted conspiracy to keep him out of the service or to close his mouth in the House of Commons there remains not a trace, that I can discover, except in the unchecked assertions of the 'Autobiography of a Seaman.' As was well said in a pamphlet printed in 1814, 'his efforts about abuses and pensions did not prevent him from being employed in his profession whenever his services were deemed necessary, nor did they prevent ministers from advising his sovereign to confer on him the honourable badge of the Bath.'

'Remarks on the Case of Lord Cochrane,' by a Near Observer.

After the affair of the Basque Roads Lord Cochrane found himself without active employment, having refused to rejoin the *Impérieuse*;[1] and consequently he was able

[1] To the unprofessional reader his conduct in refusing to join his ship looks very like disobedience of orders, and officers of less brilliant service and less aristocratic connections have been court-martialled for smaller

to devote himself with greater assiduity to his Parliamentary duties. Besides the usual topics of the Opposition of that day, such as Parliamentary Reform, the shortcomings of the Administration, the pension list, &c., he was naturally to the fore in all matters connected with his own service. The pages of the 'Autobiography' show him intervening vigorously in debates relative to the Prize and Admiralty Courts, the robberies by prize agents, the pittances doled out to wounded officers, the deplorable waste of public money, the maladministration of the dockyards and of the Admiralty funds, and the alleged ill-treatment of the French prisoners.[1]

Our naval administration was far from perfect then; it has scarcely attained perfection now. Lord Cochrane

matters. It seems an opportunity missed, had there been a vindictive Admiralty.

[1] It has come to be believed that Lord Cochrane stood alone in his generation as an advocate of naval reform and as an exposer of official corruption. Nothing is further from the truth. The defects of Admiralty administration and still more of the civil department, the Navy Board, had long been familiar to all practical sailors, and when Lord St. Vincent joined Addington's Cabinet, in February 1801, as First Lord of the Admiralty, it was with the firm determination of rooting out gross abuses, with which a naval experience of half a century had made him too well acquainted. After a personal investigation of the dockyards he and his colleagues came to the conclusion that a Parliamentary Commission to enquire into the whole of the civil branch of the naval administration was necessary. The appointment of this Commission was unpopular in the Cabinet, and was only agreed to under stress of Lord St. Vincent's threatened resignation. The Bill for their appointment was piloted through the Commons by Admiral Markham, in the teeth of strong opposition, the Admiral receiving valuable support from Edward Law, then Attorney-General, who, as Lord Ellenborough, appears to have had charge of the Bill when it reached the Committee stage in the House of Lords, where it also received the cordial approval of Lord Nelson. It passed in December 1802. Amongst the Commissioners appointed under it was included Mr. Ewan Law, Lord Ellenborough's elder brother, and for the next four years they pursued a most untiring and searching investigation into the irregularities, frauds, and other abuses in the naval departments. Their discoveries were embodied in fourteen reports, which created profound sensation in the country, and had a most dramatic consequence in the dismissal of Lord Melville from his office as First Lord and in his subsequent impeachment. A more far-reaching result was a series of reforms, which abolished many of the grosser abuses and laid the foundation of a purer and more efficient administration. The history of this Commission will be found in a narrative of the life of Admiral John Markham, published in 1883 under the title of a *Naval Career in the Old War*, and also in Brenton's *Naval History of Great Britain* (edition of 1824), vol. iii. pp. 172, 173, 181.

Hansard, Dec. 22, 1802, vol. xxxvi. pp. 1144, 1146

undoubtedly put his finger on many an ugly blot, and credit may fully be given him for zeal and enthusiasm in the causes he championed, but his best directed efforts were marred by exaggeration, by personal animosity, and by a recklessness of statement and inaccuracy in facts and figures that rendered him an easy prey to more practised debaters, and in many cases he seems to have done injury to a good cause. In the course of a debate on the Pension List he was told only too truly that 'the conduct he had of late adopted was calculated to lead him into errors, and to make him the dupe of those who would use the authority of his name to advance their own base and mischievous projects.'

May 11, 1810, Hansard, vol. xvi. p. 1017.

To gain a correct idea of Lord Cochrane's conduct and position in Parliament the pages devoted to this portion of his career in the 'Autobiography of a Seaman' should be compared carefully with the reports in Hansard, and the following dates especially are recommended for study: July 7th and 10th, 1807; March 24th, 1812; and July 5th and 8th, 1813. These two latter debates are the ones which are said in the 'Autobiography' to have brought down upon him the subsequent vengeance of the Admiralty and to have sealed his fate. That the Admiralty had nothing whatever to do with his fate, except by giving effect to the verdict of the jury, will, I hope, appear conclusively from these pages, and a careful perusal of the Parliamentary Debates will possibly modify opinion as to the wisdom and propriety of Lord Cochrane's conduct.

Of all the subjects, however, which came before the House of Commons there was none on which Lord Cochrane spoke more vigorously and more feelingly than on the altered scale of sharing prize money introduced by the new regulations of 1808. Under the scale existing previously to that year the value of all prizes was divided into eight equal parts, of which the captains received three-eighths, unless acting under the orders of a flag officer, in which case that flag officer took one-eighth, leaving the captains two-eighths. The other commissioned and warrant officers took two-eighths, and the seamen and marines the remain-

ing three-eighths. Under the new regulations the classification of some ratings was altered. An additional eighth went to the petty officers and crew, giving them four-eighths in all, while the captains' share was reduced from three-eighths to two-eighths, subject, moreover, to being still further reduced by one-third if under the orders of an admiral. The working of this scheme is shown in a paper preserved in the Admiralty Records, where, assuming that prize money to the value of 20,000*l.* was to be distributed among the ship's crew of a first-rate, it was shown that whereas under the old regulations an admiral would have received 2,500*l.* and a captain 5,000*l.*, their shares would now be 1,666*l.* 13*s.* 4*d.* and 3,333*l.* 6*s.* 8*d.* respectively, while the shares of the seamen and marines would be raised from 6*l.* 15*s.* 3*d.* to 10*l.* 5*s.* 1*d.* per man, with corresponding advances to the petty officers.[1]

'Minutes,' 1808, vol. xxxvi.

Lord Cochrane strongly resented this as an injustice to the captains, and in a motion for papers relating to a Captain King made on the 24th of March, 1812, after saying that he believed prize money and the rewards of the profession to be very principal causes of the exertions made in it, he went so far as to say that 'he confessed that they operated on his mind, and *that it was the diminution of the prize money by recent regulations which principally induced him to leave the profession for the last two or three years.*' This is a flat contradiction to the reasons for his non-employment given in the 'Autobiography,' and is one of the most noteworthy utterances of this eccentric seaman. Yet that it was no momentary explosion of spleen, but the result of settled conviction, is shown by the fact that in a pamphlet published in 1847, and entitled 'Observations on Naval Affairs,' Lord Dundonald, as he had then become, returns to the subject. There at p. 14 he says :—

Hansard, vol. xxii. p. 171.

[1] In smaller vessels individual seamen would in both cases take larger shares, as there would be fewer of them to divide the $\frac{3}{8}$ths or $\frac{1}{8}$ths, while the shares of the admirals and captains would remain the same.

Thus, in a sloop :—

	Admiral.	Captain.	Seamen (each).
Old system :	2,500*l.*	5,000*l.*	52*l.* 1*s.* 8*d.*
New system :	1,666*l.* 13*s.* 4*d.*	3,333*l.* 6*s.* 8*d.*	61*l.* 14*s.* 6*d.*

The alteration made in the mode of sharing by what was called the New Regulations (established in or about the year 1807), by which the captain's share was materially diminished (while he was the only responsible party to the Court of Admiralty in cases where the fees exceeded the value of the prize), was another erroneous measure, exhibiting either ignorance or disregard of the true causes of the failure of the navy to demolish the coasting trade of the enemy.

How far Lord Cochrane was right it is not for me to pronounce an opinion, but modern reform has gone still further against his views, and at the present date an admiral's share of prize money stands at one-thirtieth and a captain's at one-tenth of the whole. Whether well grounded or not, it was a bold line for the member of a popular constituency to take up, and in an anonymous pamphlet, published at the time of his re-election for Westminster in 1814, the electors are told to 'recollect the circumstance that in one of his addresses in Palace Yard he made it a subject of bitter invective against the Government that in the distribution of prize money they had diminished the share of the captains in order to increase that of the common seamen.'

See 'Navy List' for 1897.

Letter to the Electors of Westminster, p. 28.

At the beginning of 1814 it seemed as if the period of Lord Cochrane's inactivity and his long spell on shore were to be terminated. The unhappy war into which we had drifted with the United States was taking a turn by no means favourable to Great Britain, and the laurels won in twenty years' hard fighting with French and Dutch and Spaniards were being challenged in conflict with our kinsmen across the sea. His uncle, Sir Alexander Cochrane, was commanding the British fleet on the North American station, and was anxious for the co-operation of his distinguished nephew. In January Lord Cochrane was expecting the command of a 50-gun frigate, the *Newcastle*, but early in February he found himself appointed to the *Tonnant* line-of-battle ship, which was then fitting out at Chatham as the Admiral's flag ship, and being got ready to follow Sir Alexander to the station, whither the critical state of affairs had already compelled him to depart in a frigate.

Letter to Wm. Jackson, Committee of Privileges, 1863.

On the 5th of February we find Lord Cochrane writing from his uncle Basil Cochrane's house in Park Street, Grosvenor Square, to the Secretary of the Admiralty, begging leave that their Lordships would dispense with his joining the ship for ten or twelve days, in order that he might be enabled to arrange affairs of great private importance. The business, he said, which he had to finish required his undivided attention, as it consisted in guardedly drawing up the specification of a patent for a discovery which had occupied all his attention for the last twelve months, and which specification, when finished, he was compelled to acknowledge personally before a master in Chancery. Public Record Office Cap. c. 80, 1814.

The necessity of hurrying on the equipment of the *Tonnant* was too pressing, and the request was refused. Lord Cochrane was informed he must join forthwith, but it was added that when the ship got down the river to Long Reach their Lordships would, if the service permitted it, grant him leave, if he should still require it. He accordingly joined his ship on the 8th, took her down to Long Reach, applied again for a fortnight's leave, this time successfully, and on the 14th of February came up to London, where he remained until the end of the month.

A very few words must suffice for the other persons whose names are mentioned in the Stock Exchange advertisement. Of the Honourable Andrew James Cochrane Johnstone it is difficult to give any authoritative account. He was a younger son of the eighth Earl of Dundonald, and was consequently uncle to Lord Cochrane, though not many years older. Entering the army in 1785, he had risen rapidly; he was a full colonel in 1797, and in that year was appointed Governor of Dominica.

During his tenure of office serious differences arose between him and a subordinate, who accused him of irregularities; they culminated in a court-martial in 1803, and though he seems to have been acquitted of the charges, he was passed over for promotion and resigned the service in dudgeon. In 1805 he had published a defence of his conduct, and William Cobbett took up his cause as a handle for a vehement attack on the

Commander-in-Chief, the Duke of York. In 1807 he had entered Parliament for the notorious borough of Grampound, and was returned again at the general election of 1812. He seems to have become involved in various trading enterprises, which turned out unfortunately, and in consequence of them heavy pecuniary claims had been made against him, which he either could not or would not satisfy, and he was indebted to his privilege as a member of Parliament for exemption from arrest.

Mr. Richard Gathorne Butt had formerly held the situation of pay clerk in Portsmouth Dockyard, but was at this time apparently without regular occupation. He was a constant and a successful speculator in the Funds, and had an office in the City, where he attended daily. He is described as odd and vain, but the success of his Stock Exchange transactions had brought him notoriety and popularity and an introduction to persons of a rank above his own. He had made Lord Cochrane's acquaintance in 1812 when trying unsuccessfully to induce him to call the attention of Parliament to some reductions which had been made recently in the emoluments of his office, and for some months previous to the 21st of February, 1814, he had been in the habit of advising and directing Lord Cochrane's pecuniary speculations.

'Review of the Case of Lord Cochrane,' p. 81.

p. 82.

Of the others Holloway was a wine merchant, living in St. Martin's Lane, Cannon Street. Sandom had also been in the wine trade, but was at this time a prisoner within the rules of the King's Bench; and Alexander M'Rae was an adventurer in the lowest financial straits, living with his wife in Fetter Lane.

CHAPTER II

THE STOCK EXCHANGE COMMITTEE

It is now time to return to the proceedings of the sub-committee of the Stock Exchange. The notice mentioned in the last chapter had been posted on the 4th of March, and on the 7th they issued their report, with the evidence annexed.

After setting out the arrival at Dover of the person representing himself to be Colonel Du Bourg, they stated that he had been traced all the way to London, and that it appeared that about a quarter before nine he had arrived at Marsh Gate, Lambeth, alighted there, and got into a hackney coach, in which he was taken to No. 18 Green Street, Grosvenor Square. They then went on to say that it appeared that while this grand plot was carrying on from Dover a sort of under-plot was also carrying on from North Fleet to London, for on the same morning a person of the name of Ralph Sandom, who had absented himself from the rules of the King's Bench, set off from North Fleet in company with two other persons dressed as foreigners, in a post-chaise, to Dartford. When they arrived there they got into a post-chaise and four for London. They decked the horses with laurel, directed the postboys to drive over London Bridge and through the City, and circulated on their way the same news as the pretended Du Bourg had given at Dover. After driving through the City the chaise passed over Blackfriars Bridge, and stopped, like the former one, within a short distance of the Marsh Gate.

The sub-committee stated that they had resolved to refrain from making any observations on the evidence, and published it accordingly without comment, but that there

was every reason to hope that the chain of evidence which they had obtained would finally lead to a full discovery of the offending party; and they added that they were in possession of still further information on the subject, which it was considered proper not to disclose at present, but which they hoped would eventually crown their efforts with complete success. They had the satisfaction of being able to declare that it did not appear that any member of the Stock Exchange had been implicated in the knowledge or participation of a measure which would have inevitably rendered him liable to expulsion from the house. Then followed the names of the committee, Charles Laurence, chairman; Charles Nairne, deputy chairman; Benjamin Oakley, Lewis Andrew de la Chaumette, Christopher Terry, Francis Wakefield, Francis Bailey, John Lewis, John Capel, William Hammond.

The minutes of evidence contain the substance of the statements of ten witnesses, and with regard to them the committee pointed out that, having no legal power to compel the attendance of persons whose evidence would have been of the greatest importance, they had been obliged to resort to a more indirect mode of procuring the information on which their report was founded.

The first of the witnesses was Shilling, the Dartford postboy, who had driven Du Bourg on the last stage into London. His narrative was to a great extent an amplification of that given in the last chapter. He gave a description of the Colonel, whom he described as wearing a brown surtout and a red coat under it, and said he had no doubt he should know him again. He added that he had with him a sword and a small portmanteau, which were laid on the seat of the chaise, and also that on the way from the coach stand in the Lambeth Road to the Marsh Gate the stranger drew up the side blind of the chaise at the corner where he sat, as if to hide himself.

William Crane, driver of hackney coach No. 890, had taken up Du Bourg at the Marsh Gate. He was directed to drive to No. 13 Green Street, Grosvenor Square, where the gentleman alighted, knocked at the door, enquired for

Colonel or Captain some one, whose name he did not catch, and was told by the servant that he was gone to breakfast in Cumberland Street. On receiving this reply the gentleman asked if he could write a note to him, and on being answered in the affirmative he went into the parlour, apparently for the purpose, taking his portmanteau and sword in his hand. The gentleman had on a brown great coat with a red coat under it, and a fur cap with gold lace. A police officer named Sayer stated that he had gone with Crane to Green Street, and identified the house, and had ascertained that Mr. Durand, to whom it belonged, had left it, and that the family who then occupied it was that of Lord Cochrane, who had come in on Thursday, the 17th of February.

Mr. Laurence, the Chairman of the Committee, stated that he had been to Messrs. Bond and Co., the bankers, and had ascertained that four one-pound notes paid away by Du Bourg on his journey had been in their hands between one and two o'clock on Saturday, the 19th of February. It was further ascertained that Christmas, clerk to a stockbroker named Fearn, had obtained from them that same afternoon fifty one-pound notes in exchange for four ten-pound and two five-pound notes, and Christmas acknowledged, after much hesitation and apparent unwillingness, that he had delivered the one-pound notes so obtained to Mr. Butt. These four ten-pound notes were also identified by an official from the Bank of England, as having been paid by Messrs. Bond and Co. as part of the value of a draft for 75*l.* drawn by Mr. Fearn and payable to Mr. Butt.

Mr. Fearn, the employer of Christmas, stated that he knew Lord Cochrane, the Hon. A. Cochrane Johnstone, and Mr. Butt; that he had been in the habit of transacting business for each of them in the public funds; that on the morning of the 21st of February, he sold for various persons Consols and Omniums to a very large amount, in the whole about 928,000*l.*; of this sum there were sold for—

	Omnium.	Consols.
Lord Cochrane . .	£189,000 .	None.
Hon. A. C. Johnstone .	120,000 .	£100,000
Mr. Butt . . .	154,000 .	168,000

most of which had been purchased in the course of the week preceding; that Mr. Butt often acted for Lord Cochrane in his instructions to buy and sell stock, and that such bargains were always acknowledged as correct by Lord Cochrane; that Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt were with him by ten o'clock in the morning of the 21st of February;[1] that Mr. Cochrane Johnstone had taken an office for him in Shorter's Court, next door to the Stock Exchange, without his knowledge, and that he entered it on the morning of the 21st of February; that although he sold a great deal of stock on that day, yet (with the exception of the three names above mentioned) he did not sell for any one person above 55,000*l.*; that Lord Cochrane bought 20,000*l.* of the Omnium above mentioned on Saturday, February the 19th, and Mr. Cochrane Johnstone 60,000*l.* on Friday, February the 18th; that he thought Mr. Cochrane Johnstone and Mr. Butt acted in concert on Monday, February the 21st, although at other times they had occasionally acted different ways in the purchase and sale of stock; that the whole of the above business was done for the next settling days, and not for money.

Mr. Hichens, another stockbroker, stated that he had known Mr. Cochrane Johnstone for some years, but had not done any business for him in the public funds before the present year; that about the 8th of February the latter began to make some purchases in Omnium which had increased to such an extent that on the 14th of February it amounted to 565,000*l.*; that of this sum 200,000*l.* was sold on February the 16th, and 118,000*l.* on February the 17th; that the remaining sum of 250,000*l.* was sold on the morning of February the 21st; that out of this sum of 250,000*l.* it was stated by Mr. Cochrane Johnstone that 50,000*l.* was for a friend of his; and he consented to be a guarantee for any loss which might accrue. Hichens said he did not know either Lord Cochrane or Mr. Butt.

Another stockbroker, named Smallbone, stated that he

Trial, p. 165, *infra*, p. 100.

[1] It was added, however, that on further consideration Fearn expressed doubt as to the fact of Lord Cochrane's being present at his office that morning; and, as will be seen, at the trial he swore he was not.

had bought, a few days prior to February the 21st, 40,000*l.* Omnium for Mr. Cochrane Johnstone and 40,000*l.* Omnium for Mr. Butt; both these were sold in the morning of February 21st. The bargains were made for the next settling day, and not for money.

Lastly, a Mr. J. M. Richardson, a bookseller, but occasionally acting as what we should call an outside-broker, stated that on the afternoon of Saturday, February the 19th, Mr. Butt applied to him to buy 150,000*l.* Omnium for the next settling day; that he had once purchased 20,000*l.* Omnium for him, and gained §ths per cent. on the transaction, but that he declined entering on so large a speculation as the one now proposed; that, however, he did purchase 30,000*l.* Omnium for Mr. Butt as he requested, and that he sold it on the morning of February the 21st.

From these statements, said the Committee, it appeared that on the afternoon of Saturday, February the 19th, the three parties above mentioned might be considered as having purchased for the next settling days the following sums, viz.:—

	Omnium.	Consols.
Lord Cochrane . .	£139,000 .	None.
Hon. A. C. Johnstone .	410,000 .	£100,000
Mr. Butt . . .	224,000 .	168,000
Total . . .	£773,000	£268,000

the whole of which was sold on the morning of Monday, February 21st.

This report of the Committee of the Stock Exchange is, of course, subject to the observation that the evidence given was not on oath, and that there was nothing in the nature of cross-examination. The Committee abstained from formulating any charges, but the bare statement of the financial transactions of Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt was too pointed to conceal the direction which suspicion had taken; combined with this it was asserted in the evidence that Du Bourg had completed his pilgrimage at Lord Cochrane's house, and that some of the bank notes distributed by him had been in the

possession of Mr. Butt less than forty-eight hours before the fraud.[1]

The Stock Exchange Committee were roundly abused for their conduct in publishing this report, as tending thereby to prejudge the case.[2] But, as pointed out at the time, 'it was more than laying open the brief of counsel to his opponent; it was giving to the party inculpated full knowledge of the "head and front" of the charge against him; full time to inquire into the character, connections, and motives of all the witnesses; to probe and cross-examine them before the time of their appearance in Court; in short, to guard against the effects which could be produced by witnesses procured and stimulated by improper means.'[3] And the importance of this will be appreciated if we remember that in those days the accused had no right to the perusal of the depositions taken against them, and that in the events which here followed the True Bill was found without any preliminary inquiry before magistrates.

The fraud had been perpetrated on the 21st of February, and Lord Cochrane had remained in town until the 28th, completing the specification of his lamp patent. His leave expiring on that day, he went down to Chatham and joined the *Tonnant*. The ship's log shows that her men were at work about her masts and rigging, and records the ordinary incidents of a man-of-war getting ready for sea. Lord Cochrane says in his affidavits that on the 8th or 9th of March he received an intimation that placards were affixed in several of the streets, stating that a pretended Colonel Du Bourg had gone to his house in Green Street; that he went to

[1] A copy of this report is to be found in the Inner Temple Library, but it is printed almost verbatim in Mr. Butt's pamphlet, referred to *infra* p. 46.

[2] Cobbett wrote in the *Weekly Register* of March 21 (vol. xxv. No. 13), that 'Under no wild democracy, under no military despotism, under no hypocritical and cunning oligarchy, under no hellish tyranny upheld by superstition, was there ever committed an act more unjust and more foul than what has within these three weeks been committed in the City of London, through the means of the Press, against these three gentlemen.' Francis Horner, on the other hand, one of the most justly respected members of the Whig opposition, declared that the public were much obliged to those individuals who had exerted themselves in tracing the Stock Exchange fraud to its source. Hansard, vol. xxvii. p. 987.

[3] 'Remarks on the Case of Lord Cochrane,' p. 16.

Admiral Surridge, the Port Admiral at Chatham, to obtain leave of absence, which was granted previous to the receipt of the leave forwarded by the Lords Commissioners of the Admiralty,[1] and that he arrived in London, to the best of his belief, on the 10th of March. In the 'Autobiography of a Seaman' this account is amplified :—

On the 7th of March (it says) the Committee of the Stock Exchange published an advertisement offering a reward of 250 guineas for the discovery of the person who had perpetrated the hoax, a report being at the same time current that the pretended Du Bourg had on the morning of the 21st of February been traced to my house in Green Street. . . . On learning the injurious report above mentioned, and being aware, from the ordinary channels of public intelligence, of the nature of the transaction—being, moreover, indignant that the perpetrator of the deception should have dared to visit me, I determined to denounce him in order that, if he were really the guilty person, his name should be made public at the earliest possible moment, so that no time might be lost in bringing the matter home to him. In pursuance of this determination I obtained leave of absence from the ship. On my return to town I found that although the authorities were ignorant of the name of the person who came to my house on the 21st of February, public rumour did not hesitate to impute to me complicity in his transactions simply from the fact of the suspected person, whoever he might be, having been there.

Vol. ii. p. 332.

It is unnecessary to point out that this version hardly does justice to the evidence elicited in the Stock Exchange inquiry, and it rather strains one's credulity to be told that it was only 'through the ordinary channels of public intelligence' that Lord Cochrane, the member for Westminster, 'became aware of the nature of the transaction.' He had been in London for a week after the fraud, in constant intercourse with men deeply interested in the Stock Exchange; he had himself profited largely by the rise in the stocks, and had continued his speculations for some days after the 'hoax.' It was the talk of the lobbies of

See 3rd report of the Stock Exchange Committee, p. 239, *infra*.

[1] This latter leave was apparently granted not on Lord Cochrane's application, but on that of a near relative. See Croker's Letter, March 22nd, *infra*, p. 41.

the House of Commons and of the whole town, and Lord Cochrane must indeed have been engrossed in his patent specifications if he did not share the general interest or listen to what was so absorbing a topic of general conversation.

From the endorsement on Admiral Surridge's letter, it appears that he executed his commission on the 8th or 9th of March, and we may conclude that Lord Cochrane went up to London on one of those days. The 'Morning Post' for the 9th of March states that 'the Stock Exchange Committee have by invitation waited on Lord Melville (the first Lord of the Admiralty), and it is understood a noble lord, whose name has been frequently mentioned in the investigation of this business was also requested to attend Lord Melville at the same time.' That Lord Cochrane had an interview with his official superior immediately on his arrival in town is most probable, but there is no evidence that he sought or obtained one with the Stock Exchange Committee. It is difficult to believe that Lord Cochrane did not place himself in immediate communication with his solicitors, Messrs. Farrer, of No. 66 Lincoln's Inn Fields, especially as we know that they were acting for him in connection with his lamp patent, but he tells us (in his later affidavit of the 14th of June) that, conscious of his own innocence, and fearing no consequences from a development of every part of his own conduct, and desiring only to rescue his character from erroneous impressions made by misrepresentations in the public prints, he, without any communication whatever from any other person, and without any assistance, on the impulse of the moment, prepared an affidavit, which he swore before Mr. Graham, the magistrate, on the 11th of March.[1] He adds, moreover, that at the time he made such affidavit he had not seen or heard the contents of the report pub-

Butt's Pamphlet, p. 8.

Trial, p. 565, *infra*, p. 185.

[1] This practice of 'administering and receiving oaths and affidavits voluntarily taken and made in matters not the subject of any judicial inquiry, nor in anywise pending or at issue before the justice of the peace or other person by whom such oaths or affidavits have been administered or received,' was declared illegal and abolished by 5 and 6 Wm. IV. c. 62, s. 13.

lished by the Committee of the Stock Exchange, except partial extracts in the newspapers.

This affidavit, which was to play so important and fatal a part in the subsequent proceedings, ran as follows:—

Having obtained leave of absence to come to town, in consequence of scandalous paragraphs in the public papers, and in consequence of having learnt that handbills had been affixed in the streets, in which (I have since seen) it is asserted that a person came to my house at No. 18 Green Street, on the 21st day of February, in open day, and in the dress in which he had committed a fraud, I feel it due to myself to make the following deposition, that the public may know the truth relative to the only person seen by me in military uniform at my house on that day. Trial, p. 201.

COCHRANE.

March 11, 1814.

18 Green Street.

I, Sir Thomas Cochrane, commonly called Lord Cochrane, having been appointed by the Lords Commissioners of the Admiralty to active service (at the request, I believe, of Sir Alexander Cochrane) when I had no expectation of being called on, I obtained leave of absence to settle my private affairs previous to quitting this country, and chiefly with a view to lodge a specification to a patent relative to a discovery for increasing the intensity of light. That in pursuance of my daily practice of superintending work that was executing for me, and knowing that my uncle, Mr. Cochrane Johnstone, went to the city every morning in a coach.

I do swear, on the morning of the 21st of February (which day was impressed on my mind by circumstances which afterwards occurred) I breakfasted with him at his residence in Cumberland Street, about half-past eight o'clock, and I was put down by him (and Mr. Butt was in the coach) on Snow Hill, about 10 o'clock; that I had been about three-quarters of an hour at Mr. King's manufactory at No. 1 Cock Lane, when I received a few lines on a small bit of paper, requesting me to come immediately to my house; the name affixed, from being written close from the bottom, I could not read. The servant told me it was from an army officer, and concluding that he might be an officer from Spain, and that some accident [1] had

[1] In his affidavit sworn in Court on the 14th of June, after the verdict of the jury, Lord Cochrane varies this: 'When this deponent returned home, he Trial, p. 564, *infra*, p. 184.

befallen my brother, I hastened back, and I found Captain Berenger, who, in great seeming uneasiness, made many apologies for the freedom he had used, which nothing but the distressed state of his mind, arising from difficulties, could have induced him to do. All his prospects, he said, had failed, and his last hope had vanished of obtaining an appointment in America. He was unpleasantly circumstanced on account of a sum which he could not pay, and if he could, that others would fall upon him for full 8,000*l.* He had no hope of benefiting his creditors in his present situation, or of assisting himself. That if I would take him with me he would immediately go on board and exercise the sharpshooters (which plan Sir Alexander Cochrane, I knew, had approved of). That he had left his lodgings and prepared himself in the best way his means allowed. He had brought the sword with him which had been his father's, and to that, and to Sir Alexander, he would trust for obtaining an honourable appointment. I felt very uneasy at the distress he was in, and knowing him to be a man of great talent and science, I told him I would do everything in my power to relieve him, but as to his going immediately to the *Tonnant*, with any comfort to himself, it was quite impossible. My cabin was without furniture; I had not even a servant on board. He said he would willingly mess anywhere. I told him that the ward-room was already crowded, and besides, I could not with propriety take him, he being a foreigner, without leave from the Admiralty. He seemed greatly hurt at this, and recalled to my recollection certificates which he had formerly shown me from persons in official situations. Lord Yarmouth, General Jenkinson, and Mr. Reeves, I think, were amongst the number. I recommended him to use his endeavour to get them, or any other friends, to exert their influence, for I had none, adding that when the *Tonnant* went to Portsmouth I should be happy to receive him. I knew from Sir Alexander Cochrane that he would be pleased if he accomplished that object. Captain Berenger said that not anticipating any objection on my part from the conversation he had formerly had with me, he had come away with intention to go on board and make himself useful in his military capacity; he could not go to Lord Yarmouth, or any other of his friends, in this dress (alluding to that which he had on), or return to his lodgings,

fully expected to have met an officer from abroad with intelligence of his brother, who had by letter to this deponent, received on the Friday before, communicated his being confined to his bed, and severely afflicted by a dangerous illness, and about whom this deponent was extremely anxious.'

where it would excite suspicion (as he was at that time in the rules of the King's Bench), but that if I refused to let him join the ship now he would do so at Portsmouth. Under present circumstances, however, he must use a great liberty, and request the favour of me to lend him a hat to wear instead of his military cap. I gave him one which was in a back room with some things that had not been packed up, and having tried it on, his uniform appeared under his great coat; I therefore offered him a black coat that was laying on a chair, and which I did not intend to take with me. He put up his uniform in a towel, and shortly afterwards went away in great apparent uneasiness of mind; and having asked my leave, he took the coach I came in, and which I had forgotten to discharge in the haste I was in. I do further depose that the above conversation is the substance of all that passed with Captain Berenger, which, from the circumstances attending it, was strongly impressed upon my mind, that no other person in uniform was seen by me at my house on Monday, the 21st of February, though possibly other officers may have called (as many have done since my appointment); of this, however, I cannot speak of my own knowledge, having been almost constantly from home arranging my private affairs. I have understood that many persons have called under the above circumstances, and have written notes in the parlour, and others have waited there in expectation of seeing me, and then gone away; but I most positively swear that I never saw any person at my house resembling the description and in the dress stated in the printed advertisement of the members of the Stock Exchange. I further aver that I had no concern, directly or indirectly, in the late imposition, and that the above is all that I know relative to any person who came to my house in uniform on the 21st day of February before alluded to. Captain Berenger wore a grey great coat, a green uniform, and a military cap. From the manner in which my character has been attempted to be defamed it is indispensably necessary to state that my connection in any way with the funds arose from an impression that in the present favourable aspect of affairs it was only necessary to hold stock in order to become a gainer without prejudice to anybody; that I did so openly, considering it in no degree improper, far less dishonourable; that I had no secret information of any kind, and that had my expectation of the success of affairs been disappointed, I should have been the only sufferer. Further, I do most solemnly swear that the whole of the Omnium on account, which I possessed on the 21st day of February, 1814,

amounted to 139,000*l.*, which I bought by Mr. Fearn (I think) on the 12th ultimo at a premium of 28¼, that I did not hold on that day any other sum or account in any other stock directly or indirectly, and that I had given orders when it was bought to dispose of it on a rise of 1 per cent., and it was actually sold on an average at 29½ premium, though on the day of the fraud it might have been disposed of at 33½. I further swear that the above is the only stock which I sold of any kind on the 21st day of February, except 2,000*l.* in money which I had occasion for, the profit of which was about 10*l.* Further, I do solemnly depose that I had no connection or dealing with anyone save the above-mentioned, and that I did not at any time, directly or indirectly, by myself or by any other, take or procure any office or apartment for any broker or other person for the transaction of stock affairs.

Charles Random De Berenger, whose name was thus introduced into the story, was a foreigner of Prussian origin, and according to his own account of ancient lineage. His family had settled in North America, and had adhered to the Crown in the War of Independence, suffering in consequence considerable pecuniary losses; and since 1783 he had resided in London, supporting himself as a draughtsman and designer, and by bringing out and patenting various inventions.[1] He was, like other inventors, always just on the brink of making his fortune, and in the meanwhile gradually dissipating what little he possessed. His schemes embraced almost every province of knowledge, and he gives in his writings a long list of inventions connected with manufactures, mechanism, agriculture, the fine arts, and the naval and military services. Whatever the merits of these inventions may have been, there can be no doubt that he was a very skilful draughtsman and a man of great ingenuity and resource. He had strong military leanings, and in 1804 had joined a volunteer corps, the Duke of Cumberland's Sharpshooters, of which he was acting adjutant, with the honorary rank of captain, for many years. This corps, from which the modern 'Victorias' trace an

[1] This rests on his own statement made in a petition to the House of Commons. *Hansard*, vol. xxvii. p. 970. He enjoyed the title of Baron by the courtesy of some of his friends.

unbroken descent, was then under the command of Lord Yarmouth, and was the first volunteer regiment equipped with the rifle, and De Berenger was not only a proficient shot, but well experienced in the drill, and in the mechanism of the weapon; in addition to this, he had studied military pyrotechnics, and had, as was stated in the affidavit, applied to Admiral Sir Alexander Cochrane for permission to accompany him to North America. Sir Alexander was apparently quite willing for him to do so, but the difficulties proved insuperable. De Berenger had no military rank, he was a foreigner, and his pecuniary affairs having reached a crisis, he had been compelled for some time to live as an insolvent debtor in the rules of the King's Bench, with a heavy weight of undischarged liabilities. This residence however permitted him considerable liberty; he seems to have been a not unfrequent visitor at the houses both of Sir Alexander and of the Hon. Basil Cochrane; he was also on terms of undoubted intimacy with Mr. Cochrane Johnstone, and had met Lord Cochrane on several occasions at the table of his relatives.

Letter to Lord Ellenborough, pp. 59, 65.

Having sworn this affidavit, Lord Cochrane immediately took steps to have it printed and published in the newspapers: whether he sent a copy of it to the Lords of the Admiralty does not appear. It has always been made a strong point by Lord Cochrane that this affidavit was the first intimation which the Stock Exchange received of the identity of the imaginary Du Bourg with the real De Berenger, but against this must be set the fact that the Stock Exchange Committee in their second report (dated the 27th of January, 1815, and signed by the same ten members who signed the original report) state (paragraph 5)—

Trial, p. 198.

infra, p. 237.

That Lord Cochrane was not the first person who pointed out to the sub-Committee that De Berenger was the pretended Colonel De Bourg, since a gentleman (to whom the whole of the reward of two hundred and fifty guineas has since been given), as well as some other gentlemen, whose names it is unnecessary here to mention, had pointed him out to the sub-Committee five days prior to the publication of his lordship's affidavit of

the 11th of March; and a warrant had actually been previously obtained against him.[1]

On or about the 14th of March[2] the Lords of the Admiralty wrote to Lord Cochrane through their secretary (John Wilson Croker), that they had read the report of the Committee of the Stock Exchange, together with his affidavit on the subject of the fraud, and that having taken both into consideration they were of opinion that further explanation was necessary.[3] At the same time it had become imperative to appoint an acting captain to superintend the fitting out of the *Tonnant*, and Captain Johnson, a former first lieutenant of Lord Cochrane's, whom he had previously recommended for this very post in his letter of February the 5th, quoted above, went on board her on the 16th of March.

See p. 25, *supra*.

P.R.O., Cap. C. 142, 1814.

On the 15th Lord Cochrane wrote to Croker begging that he would move their Lordships to inform him on what points they required elucidation. To this Croker replied on the 17th, that—'As the case was become the subject of judicial or other investigation, their Lordships did not think fit to enter into any detailed examination or discussion of the several points which might require to be explained.'

P.R.O., Cap. C. 144.

On the 22nd of March, Lord Cochrane returned to the charge in an angry letter, in which he informed the Lords of the Admiralty through Croker, that he had employed himself in collecting information for the public, 'which my respect

[1] It will be seen from the affidavit of Isaac Davis, sworn on March 21st, that he was in Lord Cochrane's house in Green Street when De Berenger drove up on the morning of the fraud, and recognised him from 'having seen him when his lordship lived in Park Street.' This man, a negro, had formerly been in Lord Cochrane's service, but had just left it, and was in the house accidentally. It may well have been from him that information leaked out.

infra, p. 42.

[2] This letter is not preserved, but its contents are made clear from Lord Cochrane's letters of the 15th and 22nd of March.

[3] That the Lords of the Admiralty were not the only persons to whom Lord Cochrane's affidavit did not carry conviction appears from a letter of the Hon. George Eden (afterwards the second Lord Auckland) to his father, on the 14th of March: 'Lord Cochrane's defence is not satisfactory, and still less so are those of Mr. C. Johnstone and Mr. Butt.' *Journal of Lord Auckland*, vol. iv. p. 411.

for their Lordships gives me full confidence they will receive and consider.' Their Lordships he said had virtually given judgment on *ex parte* evidence, and had superseded him in the command of his ship on no better foundation than declarations retailed from pot-houses and such like places by persons not upon oath, which declarations, given in the absence of the accused, were absurd and contradictory. 'It becomes me, Sir, whatever may be the decision of their Lordships, to neglect nothing that can throw light upon this affair.' So far as related to himself, at least, he declared that the pretended evidence published by the Committee of the Stock Exchange was a tissue of misrepresentation from one end to the other, and means the most foul and detestable had been resorted to, to asperse his character. If the points which required explanation were not yet satisfactorily refuted, and if anything yet remained unsatisfactory to the minds of their Lordships, he begged to repeat his request, that their Lordships would state these points specifically with as little hesitation as they did their opinion generally on the 14th instant, when they were pleased to add their decision that he could not sail in the command of his Majesty's ship 'until the final and satisfactory determination of this business.' With the letter Lord Cochrane enclosed the five affidavits referred to in the next paragraph. Croker acknowledged it on the same day, referring him to the letter of the 17th, to which their Lordships did not think it necessary at present to add anything except upon one point, which, being unconnected with the transaction of the Stock Exchange, they felt themselves at liberty to observe upon:—

Your lordship states that as the case now stands, their Lordships have virtually given judgment on *ex parte* evidence, and hence superseded you in the command of your ship. Now my Lords had hoped that your lordship would have been sensible that far from giving judgment and superseding you in the command of the *Tonnant*, my Lords had treated your lordship with all possible attention and delicacy; your lordship had leave of absence granted to you on the application of a near relative to enable your lordship to come, if you should choose

to do so, to town for the purpose of taking such measures as you might think proper on the subject of the Stock Exchange report, but as his Majesty's service could not be permitted to stand still on account of your lordship's absence from the ship, an *acting* captain was appointed to her, and the choice of the officer to be so appointed was left to your lordship.

Butt's pamphlet, pp. 54–57.

The affidavits enclosed in Lord Cochrane's letter were five in number. The first of these was by Thomas Dewman, the footman at No. 13 Green Street. His testimony was to the effect that on the 21st of February a gentleman came in a hackney coach, and, on finding his lordship out, desired to go in and write a note, which he did in the parlour. Dewman told him that his lordship had gone to breakfast in Cumberland Street, and then, going himself to inquire, brought back the news that he had gone into the city, and most likely would not be back before dinner time. The stranger said his business was pressing, and asked if it was possible to find him. Dewman thought it might be, and went to Mr. King's tin manufactory in Cock Lane, where he delivered the note to his lordship.

The officer who sent me to the city wore a grey regimental great coat buttoned up. I saw a green collar underneath it; he had a black silk stock or handkerchief round his neck; he was of a middle size, and rather of a dark complexion. Several gentlemen called in the morning, but this was the only one that I saw in uniform at his lordship's house. I never saw Mr. Cochrane Johnstone or Mr. Butt in his lordship's house at No. 13 Green Street until the time I left London, nor any person dressed as described by Crane, the hackney-coachman.

Isaac Davis deposed that he had been in Lord Cochrane's service, but had received notice to leave on his appointment to the *Tonnant*. This warning had expired on the 21st of February, but he happened that day to be in his lordship's house in Green Street, 'where several gentlemen called in the morning, one of whom was Captain Berenger. He had on a great coat, buttoned, and a green collar under it. I knew him, having seen him when his lordship lived in Park Street.'

Mary Turpin, the kitchen maid, swore that she saw an

officer in the parlour at Lord Cochrane's house on Monday, the 21st, when she went into the parlour for the purpose of mending the fire, and that the said officer had on a grey great coat and a sword, and that his under coat or his great coat had a green collar to it.[1]

The other two affidavits were made respectively by a man called Thomas to contradict a report in the papers that he had sold foreign coins to Lord Cochrane, and by King, the tinman in Cock Lane, to the effect that Lord Cochrane had been with him between 10 and 11 on the morning of February the 21st at his manufactory, superintending the construction of his patent lanterns, and that while his lordship was there he received a note from his man, read it, and shortly after went away.

It will be noticed that the three former of these documents were directed principally to a matter of great importance, round which an apparently endless controversy was to rage—the colour, namely, of De Berenger's coat, whether it was red or green. I do not wish to anticipate matters on this point, and would only remark at present that while this testimony is positive as to the collar of the coat being green, it nowhere asserts that the coat itself was not red, except, perhaps, in Dewman's observation that he did not see any person dressed as described by Crane. We know from a statement afterwards made by Messrs. Farrer, and which will be referred to in a later chapter, that on the afternoon of the 20th of March these affidavits were prepared by one of their clerks in Lord Cochrane's house in Green Street, his lordship dictating from papers, but not in the presence of the witnesses themselves. Consequently, instead of being prepared in the usual way by the solicitor from the servants' mouths, they were taken second-hand through Lord Cochrane from notes previously made. This is evidently not the safest way of obtaining an uncoloured statement in an

'Law Magazine and Review,' vol. xi. p. 197, and *infra*, p. 219.

[1] Turpin swore an additional affidavit on the 22nd of March, to the effect that on Friday, the 18th, a man sent for her out of the house and offered her 5*l.* if she would tell him what uniform the person wore who had come to her master's house about three weeks ago, but she refused to do so.

affidavit; indeed, it seems the mode of all others likely to cause the introduction of inaccuracy.

Croker's letter of the 22nd of March was apparently the last official communication made by the Admiralty to Lord Cochrane, but in their records is contained a letter dated the 7th of April from Messrs. Farrer. In it they acquaint Mr. Croker, for the information of his superiors, that Lord Cochrane has consulted them as to the proper proceedings to be taken by him against the sub-Committee of the Stock Exchange for the imputations cast upon his character by their report. Under his lordship's directions they had stated a case for the opinion of Mr. Adam and Mr. Gurney. As these gentlemen were of opinion that his lordship had no legal remedy, he had desired them as his solicitors to forward a copy of the opinion and to request that Mr. Croker would take an early opportunity of laying it before the Lords Commissioners. The endorsement on this letter in Croker's handwriting states that it was not answered because just at the time it was received the affair was made the subject of legal discussion.

P.R.O. Cap. C.

The opinion of counsel accompanied the letter. After dismissing as impracticable the method of proceeding by way of indictment or criminal information, they went on to discuss the other alternative, namely, action for libel. Here likewise, however, it appeared to them that there were difficulties, notwithstanding Lord Cochrane's innocence, calculated to defeat this course :—

The Committee of the Stock Exchange had framed their Report with great caution, so as to avoid prosecution or action; they had abstained from making observations, and had merely referred to what they called Depositions, which did not in themselves contain libellous matter, but merely stated certain circumstances, some of which were undoubtedly true, and were admitted by Lord Cochrane. If, therefore, he were to commence an action against the members of the Committee for a libel, they would plead the truth of what they had stated, and would be entitled to show by evidence, or to have it inferred from argument, that the publication was not a libel upon Lord Cochrane. Under these circumstances, as well as from the facts of stock-jobbing being admitted, counsel considered the difficulties in proceeding effec-

tually by action to be insuperable, as under the existing circumstances neither adequate damages nor even a verdict could be insured. For these reasons they could not recommend any legal proceeding to Lord Cochrane, and were obliged to view this case as one of that class where injury has been suffered to which no legal redress is applicable, and to recommend it to Lord Cochrane to submit these legal difficulties to his superiors, that they, by satisfying themselves of his moral innocence, might take such steps as their wisdom should suggest to relieve his lordship from the oppression of his present situation.

Such was the course pursued by Lord Cochrane with a view to clearing himself from the imputations contained in the Stock Exchange Report. We shall now see what steps were taken by others of the party.

On the 14th of March Mr. Cochrane Johnstone addressed the following letter to the Committee of the Stock Exchange:— Trial, p. 284.

As the Report of the Stock Exchange Committee conveys an idea to the public that they estimated delinquency by the enormous profits which accrued to Lord Cochrane, Mr. Butt, and myself on the sale of stock upon the 21st of February, and as the public prints have estimated the gains, some at 100,000*l.*, others at 75,000*l.*, and none under 80,000*l.*, I pledge myself to prove that the whole profits are as follows, viz.:—

Lord Cochrane . . .	£1,700
Mr. Butt	1,300
Mr. Cochrane Johnstone .	3,500
	£6,500

If the Committee had acted impartially they would have published a statement of all the purchases and sales effected by every broker on that day, with the names of the parties, that the public might have drawn their conclusions. To obviate this omission on the part of the Committee, I am preparing for the press a correct statement of all sums bought for the parties before mentioned, together with the names of those from whom the stock was procured and to whom sold, whereby it will be seen who were the purchasers at an early hour on the 21st of February.

A week later, on Tuesday, March the 22nd, he solemnly declared his innocence from his place in the House of Hansard, vol. xxvii. p. 339.

Commons, saying that he rose from a sense of what was due to his own character, and more especially as a member of that House, to contradict certain statements which had appeared in the public prints, implicating him in an imposition that had lately been practised in the money market. For the present he should content himself with solemnly declaring that these statements were utterly unfounded, and that he had no hand in and no knowledge of the fraudulent transaction in question. It was his intention in a few days to publish a statement which would be found fully to confirm the declaration that he now solemnly made to the House.

In the meanwhile the Stock Exchange Committee had come to the conclusion that it would be better not to cancel the bargains made on the day of the fraud, but, instead of so doing, to take an account of the profits made by the persons who had rendered themselves liable to suspicion, and to cause the money so ascertained to be paid into the hands of independent trustees to await the result of further investigation. On taking this account it was reported by the Committee that the profits of Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt, on the day of the fraud, amounted to 10,450*l.*, in the following proportions:—

Lord Cochrane . .	£2,470 0*s.*
Mr. Cochrane Johnstone .	4,931 5*s.*
Mr. Butt . . .	3,048 15*s.*
	£10,450 0*s.*

A calculation which differed materially from that made by Mr. Cochrane Johnstone.

Within a few weeks of Mr. Cochrane Johnstone's letter to the Committee appeared a pamphlet entitled 'The Calumnious Aspersions contained in the Report of the sub-Committee of the Stock Exchange exposed and refuted.' To which were added 'under the authority of Mr. Butt copies of the purchases and sales of Omnium and Consols referred to in the Report.'

This pamphlet has been generally treated as the production of Mr. Butt, but it also seems to have been written in justification of Mr. Cochrane Johnstone's letter.[1] The first part of the pamphlet was devoted to a verbatim reprint of the Report, with a criticism on the evidence of the witnesses, devoted to throwing discredit on the evidence of the postboy Shilling and the hackney-coachman Crane. Discrepancies were pointed out between their accounts of the incidents at the Marsh Gate, and of the costume worn by Du Bourg; and the story of the drive to Lord Cochrane's house in Green Street, together with the identity of Du Bourg with the gentleman mentioned in Lord Cochrane's affidavit, was ridiculed. In support of this contention all the numerous voluntary affidavits that had been sworn in connection with the transaction, Lord Cochrane's own, those of his servants, those of De Berenger's servants, and many others, were collected in an appendix, and the case, in answer to the Stock Exchange, was for the first time presented in its integrity to the public.[2] Some fifteen pages were devoted to an elaborate *résumé* of all the purchases and sales of the three incriminated parties. The object was to show that the purchases made on the 17th, 18th, and 19th of February were only part of a large speculative account which had been running all the month, and had been partially balanced by sales throughout the same period, and that the clearance sale on the 21st had been due to general instructions to the brokers to sell at a profit.

Butt's pamphlet, pp. 30–45.

Not content with his literary efforts, Butt brought an

[1] From evidence at the trial, p. 200, it appears that Lord Cochrane gave a copy of this pamphlet to Mr. John Wright, and at p. 91 of his letter to Lord Ellenborough, Lord Cochrane apparently alludes to it as 'criticisms on the Stock Exchange Report which I had published, under the influence of that opinion,' that De Berenger was not Du Bourg. A certain William Jackson, of whom more hereafter, had been engaged to act as secretary to Lord Cochrane in the middle of March, and I think it very probable that he assisted in the composition of this pamphlet.

[2] These affidavits, thirteen in number, had been previously published in the *Political Register* of the 26th of March, and had satisfied Cobbett, if no one else; and, by the aid of them and some arguments of his own, he demonstrated to his readers the absurdity of supposing that De Berenger and Du Bourg could have been the same person.

action against Mr. Bish, one of the persons in whose hands the Stock Exchange had lodged the suspended balances, amounting, as we have seen, to 10,450*l.*; swore that the latter owed him that sum, or a portion of it, for money had and received to his use, and by virtue of this affidavit sued out a writ, arrested him, and held him to bail. At the same time a cabinet maker called Isaac Donithorne, who afterwards figured as a witness at the trial, brought, on Cochrane Johnstone's behalf, no less than 135 *qui tam* actions against members of the Stock Exchange to recover penalties for offences against Sir John Barnard's Act, passed in 1737, to prevent the 'infamous practice' of stock-jobbing, and then still in force.[1]

'Remarks on the Case of Lord Cochrane,' p. 17.

Trial, p. 430. *infra*, p. 168.

Vide infra, p. 102.

Meanwhile, two very important pieces of evidence had come into the hands of the Stock Exchange. The uniform supposed to have been worn by Du Bourg had been discovered, and De Berenger had been arrested.

Butt's pamphlet, p. 18, containing an extract from the 'Day' of March 28.

On the 26th of March the sub-Committee issued a notice informing the members of the Stock Exchange that a waterman had just brought to them a bundle which he had dragged up from the bottom of the Thames on the 23rd instant, containing a scarlet regimental coat cut up into very small pieces, together with an embroidered silver star, and the silver badge of some order, all of which, together with several pieces of old lead and brass, were tied up in the cover of a white chair cushion, evidently for the purpose of being sunk. As the pretended Colonel Du Bourg was alleged to have worn a dress similar to the above on the 21st of February, the sub-Committee said they would be obliged to any member of the house who might be able to procure information relative to the subject.

[1] I have found an allusion to this in an unexpected quarter. The *Cambridge Chronicle* of Friday, the 22nd of April, 1814, contains the following information supplied by its London correspondent: 'The serving of a number of *qui tam* actions considerably interfered with the business of the Stock Exchange. On Friday 160 *qui tam* writs were served on different brokers and speculators for time bargains. On Saturday an attempt was made to serve as many more, and it is said that 150 were served. . . . A severe pugilistic fight ensued, which ended by conducting both parties before the Lord Mayor.'

On the nature of a *qui tam* action, see note to p. 163, *infra*.

Within a day or two of this De Berenger was heard of at Sunderland, trying, under an assumed name, to obtain a passage out of the kingdom.

It was, as we have seen, on the 11th of March that Lord Cochrane informed the public that De Berenger had visited him on the 21st of February. Inquiry at the latter's lodgings elicited the fact that he had quitted them on the 27th of February without saying where he was going, and without communicating with his sureties, who thus became liable for the amount of his debts.

On the 24th of March, the day after the discovery of the uniform in the Thames, a man named William Smith, who had been for some years past De Berenger's servant in his house in the rules of the King's Bench, came forward and made a voluntary affidavit to the effect that on the night of Sunday, the 20th of February, his master had slept at home, and that on the Monday, about midday, he (Smith) had gone into his room, and there seen a grey military great coat, De Berenger's green drill dress, and also a black coat, which he knew was not his master's, 'laying' upon a chair. Ann Smith, the wife of William, made at the same time a similar affidavit, saying that De Berenger's bed had been slept in on the Sunday night, and that on Monday, the 21st, her master had come home about 12 o'clock noon in a hackney coach, wearing a black coat, and having a bundle with him, 'which, by its appearance, contained his grey military great coat and green uniform.'

Butt's pamphlet, p. 59.

p. 60.

The effect of this testimony, if true, was not only to render it impossible that De Berenger could have been Du Bourg, but also to corroborate Lord Cochrane's story of the green uniform and the gift of the black coat. Smith said he had drawn up his affidavit without concert with any one and for the vindication of his master's character, but it appeared that he had taken it straight to Mr. Cochrane Johnstone that it might be published, and it figured with the others in Butt's pamphlet.[1]

Trial, p. 389.

[1] The date of the publication of the pamphlet is not given in my copy, but it was apparently written between the finding of the uniform and the arrest of De Berenger; at any rate, it contains no allusion to the latter circumstance.

On the 8th of April De Berenger was arrested at Leith. A warrant for his apprehension had been issued by the Home Secretary early in March; notes which he had cashed at Sunderland had put the authorities on the track, and he was brought up to London on the 12th, and after a short detention in the messenger's house, was committed to Newgate. In his possession was found a portable writing-desk containing papers, memoranda, pocket-book, some napoleons, and a large number of bank notes, which, on inquiry, were identified as having been in the hands of Mr. Cochrane Johnstone and Mr. Butt between the 24th and 27th of February. The Stock Exchange Committee applied to the Secretary of State that the papers, &c., found in his possession should be detained in the interests of justice, and this was accordingly done.

Unless the Stock Exchange were to stultify themselves, it had now become impossible for them to refrain from legal proceedings. If they were to stop short after obtaining so much evidence, the inference would be irresistible that they dared not bring matters to a crisis, either for fear of implicating their own members, or out of regard for the social station of the Cochranes. A prosecution was accordingly resolved upon, but before a Bill could be presented to the Grand Jury still further material had come into the possession of the Committee.

In the first place, on the 12th of April, within four days of De Berenger's arrest at Leith, the chairman of the sub-Committee of the Stock Exchange received the following letter from Mr. Cochrane Johnstone, dated from his house, No. 18 Great Cumberland Street:—

Trial, p. 282.

SIR,—I have this moment received a letter, of which the enclosed is a copy, and lose no time in transmitting it to you for the information of the gentlemen composing the Stock Exchange Committee. From the bearer of the letter I am given to understand that Mr. M'Rae is willing to disclose the names of the principals concerned in the late hoax on being paid the sum of 10,000*l.*, to be deposited in some banker's hands in the names of two persons to be nominated by himself, and to be paid to him on the conviction of the offenders.

I am happy to say that there seems now a reasonable prospect of discovering the authors of the late hoax, and I cannot evince my anxious wish to promote such discovery more than by assuring you that I am ready to contribute liberally towards the above sum of 10,000*l.*, and I rest assured that you will eagerly avail yourselves of this opportunity to effect the proposed discovery (an object you profess to have so much at heart) by concurring with me in such contribution.

I have the honour, &c.

With this was enclosed a letter dated the same day, and addressed 'To the Honourable Cochrane Johnstone.' This is how it ran :—

SIR,—I authorise the bearer of this note to state to you that I am prepared to lay before the public the names of the persons who planned and carried into effect the late hoax practised at the Stock Exchange, the 21st of February, provided you accede to the terms which my friend will lay before you. Trial, p. 283.

I am, Sir,
Your obedient servant,
A. M'RAE.

To this offer the Stock Exchange made no reply, and p. 283.
on the 18th of April, Mr. Cochrane Johnstone sent a further letter to the chairman in which he desired to be informed what was the intention of the Stock Exchange with regard to M'Rae's proposal; he added that Lord Cochrane, Mr. Butt, and himself were willing to subscribe 1,000*l.* each in aid of the 10,000*l.* required by Mr. M'Rae. This communication likewise received no answer.

The *cacoethes scribendi* had also laid hold of Mr. Butt, and he wrote a letter to the 'Morning Chronicle,' published on the 19th of April, in which he said that having read in several papers a paragraph mentioning that bank notes had been found in the trunk of Captain De Berenger which had been paid to him (Mr. Butt) by Mr. Fearn, one of his stockbrokers, he thought it proper to say that as the circumstances would be more fully discussed at a proper period, astonishment would cease when p. 53.
it was known in what manner Captain De Berenger became possessed of the notes in question.

Trial, p. 167.

In addition to this, a day or two before the Bill was presented by the Stock Exchange, Mr. Holloway waited on the sub-Committee, attended by a man called Lyte. Holloway had been before them on a previous occasion, when he denied having any knowledge of the transaction, but he now completely altered his tale. He confessed that he had participated in the plot, and that Lyte was one of the parties employed. Lyte corroborated him, and said that he and Sandom and M'Rae had ridden in the post-chaise from North Fleet to Dartford, and afterwards from Dartford to London. Holloway stated that he had done it with a view of obtaining money by the rise in the funds, little contemplating the serious turn the affair would take. Finding how grave the matter had become, he now came forward and confessed it in the hope that the Stock Exchange would not pursue it to extremities and prosecute him. He was asked whether he had any connection with Lord Cochrane, Cochrane Johnstone, or Butt, and he answered in the negative.

CHAPTER III

THE TRUE BILL

On the 27th of April[1] an indictment for conspiracy was preferred before the Grand Jury for the City of London, at the Sessions House in the Old Bailey, against De Berenger, Lord Cochrane, Cochrane Johnstone, Butt, Sandom, M'Rae, Holloway, and Lyte. A true bill was found on the same day, and the indictment, as was usual in misdemeanours of importance, was removed at the instance of the prosecutors into the Court of King's Bench.

As this was one of the many hardships complained of by Lord Cochrane, it should be pointed out that in the county of Middlesex there were two grand juries: one in the Court of King's Bench, and another at the Sessions for the county, at either of which indictments might be found. Those which were found in the King's Bench were of course tried there; many of those found at the Sessions, especially those which were of importance, were removed for trial to the superior Court. In the City of London, however, there was but one grand jury, that which attended at the Old Bailey; indictments for felony were obliged to be tried there, but with misdemeanours there was no such necessity, and in a case where there were several defendants it was usual for the prosecution to remove the indictment into the King's Bench.

'Remarks on the Case of Lord Cochrane,' p. 19.

So far from this being a disadvantage to the defendants, it was a beneficial proceeding. They were able to appear at the trial by attorney instead of in person; they were spared the degradation of the dock, and, in the event of an

[1] The date is given as the 20th in the Report of the Trial, but reference to the contemporary press shows that the 27th is correct.

adverse verdict, instead of sentence being immediately pronounced, there was an interval of some days before judgment was moved for, during which they remained at liberty; and, moreover, they had the right, enjoyed by defendants in no other criminal proceedings, of applying for a new trial.

The indictment seems to have been formally removed on the 29th of April, and on the 7th of May De Berenger, who was in custody on a further charge under the Alien Acts, and for whom bail was refused, pleaded to it; the others apparently pleaded by attorney without appearing personally. The plea in each case was not guilty. The next process was the striking of the special jury before the Master of the Crown Office. For this purpose forty-eight names were taken by the Master from the book of merchants produced to him by the Sheriff of London, and in case of suspicion of partiality it was open for either of the parties to apply to the Court of King's Bench for a new nomination. Each party then struck off twelve names, so as to reduce the panel to twenty-four, who would be summoned to attend at the trial and be called in their order until the jury of twelve was constituted. At this ceremony at the Crown Office Mr. Cochrane Johnstone himself was present, and he assisted at the reduction of the jury, nor is there any hint or suggestion that he took any ground of complaint.

Speech of the Attorney-General in Hansard, vol. xxviii. p. 588, and *infra*, p. 204.

After the trial Lord Cochrane indulged in much invective against 'packed' and 'special' juries, which he alleged to be synonymous terms. When it is considered how much of the trial is taken up by complicated sets of figures, it will, I think, be evident how necessary it was for the elucidation of truth that the issues should have been submitted to men of education conversant with business transactions. The list of jurors will be found in its proper place, and it contains names still recognised and honoured in the City of London.

The trial was finally fixed for the 8th of June, six weeks after the finding of the bill, and about four months after the commission of the fraud; and it cannot be said that ample time had not been afforded for the preparation of the

defence.[1] Lord Cochrane has stated that, conscious of his innocence, he took no personal steps for his defence beyond forwarding a general statement of a few lines to his solicitors; that he never read his brief, gave any instructions to counsel, or attended a consultation. His statements on the subject, made partly in the House of Commons, and partly in a letter to the electors of Westminster, are repeated in the 'Autobiography of a Seaman,' but they are so contradictory, and his recollection on the point was so confused, that it is difficult to gather any connected idea from them. Apart from internal discrepancies, his story is entirely at variance with the version given by the solicitors, the Messrs. Farrer.[2] What they have to say on the subject will be found in a later chapter in connection with the attack made upon them by Lord Cochrane in the House of Commons; and I think that, on an impartial perusal of the evidence there contained, the reader will agree with the conclusion expressed in the 'Law Magazine and Review,' that 'Lord Cochrane exercised a very minute and active superintendence over the preparation of his defence.' It will be sufficient here to say that extracts from their bill of costs given in that periodical show that on May 9th there was an attendance upon Lord Cochrane for the purpose of pointing out the evidence which would be required; that on May 10th the whole morning was occupied on the evidence with Lord Cochrane; that on the 12th of May the servants' evidence was read over to Lord Cochrane, when he made an alteration in that of one of them; that on May 23rd the rest of the examinations were read over to him; that on the 7th of June (the day before the trial) the evidence was again read through with Lord Cochrane, who was informed that counsel was of opinion that no witnesses should be called, and that '*on the same day arrived a letter from him desiring that Mary Turpin's statement that De Berenger's coat was red should be expunged from the brief.*'

Hansard, vol. xxviii. p. 559. 'Autobiography,' vol. ii. p. 354.

p. 452.

Vol. xi. p. 194.

p. 195.

[1] It was asserted by the Attorney-General in the House of Commons that the date of the trial was accelerated at the request of the Defendants, and that in compliance therewith it was taken out of its order. Hansard, vol. xxviii. p. 240.

[2] As will be seen later on, these gentlemen were expressly released from the obligation of professional secrecy by Lord Cochrane.

Even without this it is almost incredible that a man of Lord Cochrane's astuteness and acumen should not have realised the gravity of the charge, or the very compromising nature of the evidence already disclosed against him. He was no fresh unsophisticated young sailor suddenly confronted with a set of land sharks. He was nearly forty years old, he had been spending the last five years on shore, and, indeed, comparatively little of his time had been spent afloat; he was a man about town, widely known, and with an enormous circle of acquaintance ranging from the rough electorate of Westminster to the highest in the land; he was a member of Parliament, a 'plunger' on the Stock Exchange. If deaf and blind himself to the peril in which he stood, had he no one to warn him or to point out the necessity of leaving no precaution untaken? In the depositions published by the Stock Exchange, connection with the fraud was brought home to him more closely than to either Cochrane Johnstone or Butt. Satisfactory as the explanation of De Berenger's visit given in his affidavit might appear to himself, it could hardly have that effect universally, and he knew it had not been accepted by the Lords of the Admiralty; subsequent events, the finding of the missing uniform, and the arrest of De Berenger with the compromising bank notes on him had done nothing to allay suspicion. Lord Cochrane was undoubtedly an extraordinary man, not to be judged by the rules of prudence and probability; but there is nothing in his previous or subsequent career which gives us the idea of a man neglectful of precautions. His actions at sea were as remarkable for the skilful adaptation of means to ends, and the careful survey of every possible resource, as for the headlong daring with which they were carried out. It is difficult indeed to believe that here for the first and last time he was betrayed into reckless neglect of his interests. One thing, however, we know on his own authority, and that is that he was acquainted with the contents of De Berenger's brief, a copy of which had been shown him by Cochrane Johnstone, and with the *alibi*, which it was proposed to set up at the trial in order

Hansard, vol. xxviii. p. 560.

to prove that De Berenger could not have been the pretended Du Bourg.

The trial came on, as we have said, on the 8th of June, a Wednesday. It was held at the Guildhall before Lord Ellenborough, Lord Chief Justice of the King's Bench. The Court sat at nine, and was crowded to its utmost limits. De Berenger was there in custody; whether the other defendants were present does not appear, but we know that Lord Cochrane was absent, and he says that he spent the day looking after his lamp patents.

'Review of the Case of Lord Cochrane,' p. 108.

The present generation has seen the Parnell Commission and the Jameson trial, but I doubt if a stronger bar has ever been brought together than that collected in 'The King against De Berenger and others,' to give the title by which Lord Cochrane's case is known on the Record. It is true that neither of the law officers of the Crown was present, and it is a not unimportant fact to remember, for efforts have constantly been made to represent this as a Government prosecution. It appears that the Stock Exchange had applied to the Secretary of State to prosecute De Berenger, but whether on this charge or for a breach of the Alien Acts is not clear. In any event the application had been refused. The Attorney-General, Sir William Garrow, had been approached by both sides in his private capacity, but had refused to appear for either, on the ground that it would conflict with his public duty; and the Stock Exchange had entrusted their leading brief to Gurney, to whom they had given a general retainer as far back as the early days of April.

'Hansard,' vol. xxvii. p. 1008.

Gurney was a member of the well-known Quaker family, and in after-years became a Baron of the Exchequer and father of Mr. Russell Gurney, for many years Recorder of London. Up till this period he had been best known as the holder of a large criminal practice, who was gradually fighting his way to the front at Nisi Prius; but he was only a 'stuff gownsman,' and his experience as a leader in the superior Courts was but small. It was by his conduct of this case that he laid the foundation of a considerable practice in the King's Bench; and he shortly afterwards

obtained the rank of King's Counsel. On whatever side one's sympathies may lie, it is impossible to deny that this distinction was well deserved. Alike in his speeches, his cross-examination, and his general management and tactics, he displayed abilities of the very highest order.[1] On one point alone his conduct has been seriously attacked.

supra, p. 44.

It will be remembered that on Lord Cochrane's arrival in London from Long Reach his solicitors submitted a case to counsel as to the legal proceedings to be taken for the vindication of his character, and that the counsel they went to were Mr. Adam and Mr. Gurney. 'Some days after this,' says Mr. Russell Gurney, 'Lord Cochrane's solicitors wished again to consult Mr. Gurney, but were informed by his clerk that since he had written on the former case he had received a general retainer from the Stock Exchange.' Mr. Russell Gurney adds that the case submitted to his father by Messrs. Farrer consisted almost exclusively of reports and affidavits which had been already published, and gave no information which could be used in any way prejudicial to Lord Cochrane. Nor does there appear to have been objection raised at the time to his having accepted the retainer from the Stock Exchange or conducted the prosecution: the distinguished men who were opposed to him at the trial certainly did not complain of his behaviour in this respect, and they are hardly the men to have remained silent had they considered it questionable.[2]

'Law Magazine and Review,' vol. xi. p. 190.

Cf. p. 275, *infra*.

With Gurney were associated Bolland and Adolphus; of these the former was well known at the criminal Bar, and was also a sound commercial lawyer in the enjoyment of an excellent city practice. Like Gurney, he was

[1] Lord Brougham pays an interesting tribute to Gurney in his 'Statesmen of the Time of George III.,' vol. i. p. 130, *n.*, where he speaks of him as 'a warm friend of civil and religious liberty, and of that highly respectable and useful family to whom the art of stenography and the history of public proceedings owes much; and whose steady and honest adherence to their principles covers them with honour.'

[2] In the *Autobiography of a Seaman* Lord Cochrane is made to throw away whatever advantage he might have derived from this fact by accusing Gurney of having advised him in the drawing up of his affidavit of the 11th of March, which is flatly contradicted in his own subsequent affidavit of June the 14th: 'I, without any communication whatsoever with any person,

Vol. ii. p. 333.

infra, p. 185.

eventually enrolled amongst the Barons of the Exchequer; but perhaps a higher claim to fame is derived from the fact that he was a devoted bibliophile, and one of the founders of the Roxburghe Club. Adolphus, equally well known to his contemporaries as a historian and an advocate, was emphatically an Old Bailey lawyer, accustomed to every turn and twist of the game, and thoroughly versed in the intricacies of the criminal law. Without being quarrelsome, he was well able to hold his own, and his excursions into the Courts at Westminster were generally provocative of sharp conflicts with the Nisi Prius leaders, in which Adolphus was seldom the vanquished.

Formidable, however, as this trio might have been in an ordinary prosecution, they were completely outclassed in numbers and reputation by the serried rank of brilliant men opposed to them. In selecting their counsel the defendants had severed into four groups: De Berenger and M'Rae each stood by themselves; Holloway, Lyte, and Sandom were together; and so were Lord Cochrane, Cochrane Johnstone, and Butt. These last three defendants, though represented by the same counsel, employed different solicitors: Messrs. Farrer, as we have seen, acted for Lord Cochrane; Cochrane Johnstone and Butt had employed the firm of Brundrett, Wainwright, and Spinks. Lord Cochrane asserts that he had desired to be separately defended, and that it was against his wish and without his knowledge that his defence was joined with that of Cochrane Johnstone and Butt. That it was without his knowledge seems to me on a par with the general assertion of his own neglect of his case, which we have already examined; for the further imputation which he makes, that the joinder of the defence was due to want of consideration or inquiry, there is not the smallest justification. On the

Letter to the electors of Westminster, 'Autobiography,' vol. ii. p. 456. Hansard, vol. xxviii. p. 560.

and without any assistance, on the impulse of the moment prepared the before-mentioned affidavit;' and also in his letter to Lord Ellenborough: '*If my affidavit had been drawn up by a lawyer*, it certainly would not have been omitted.' The *Autobiography* even goes so far as to say, without any shadow of foundation or authority: 'Mr. Gurney . . . to whom I had unreservedly communicated every circumstance connected with my private affairs.'

Letter to Lord Ellenborough, p. 45. Vol. ii. p. 334.

contrary, there is conclusive evidence that the question of joining or severing was often and anxiously considered by the solicitors in consultation with counsel, if not with Lord Cochrane himself, and that there was much hesitation at first, but that finally, when they had the ripest information on the case, the counsel unanimously concurred in advising a joint defence.[1]

The error of judgment, then, if error it was, proceeded from Lord Cochrane's own counsel after fullest consideration, and he would be a bold man who would set his judgment against the unanimous opinion of Best, Topping, Scarlett, and Brougham.[2]

On these last two names it is as unnecessary as it would be presumptuous to dwell—Scarlett, the incomparable verdict-getter, and Brougham, the intrepid advocate and reformer. The name of William Draper Best is less familiar to this generation, possibly because in his later years he was known to the world as Lord Wynford. His judicial career as a puisne in the Court of King's Bench, and as Chief Justice of the Common Pleas, was respectable if not remarkable, but at the Bar, in that class of case which required tact, assiduity, and delicate handling rather than deep legal knowledge, he had few equals. Having

'Law Magazine and Review,' vol. xi. p. 198.

[1] It appears from the above quoted article, which was obviously inspired with information from Messrs. Farrer, that Mr. Parkinson, the member of their firm who managed the case, had consultations on this subject as follows:

May 10.—With Mr. Adam, who suggested a separate defence.

May 16.—With Mr. Scarlett, who hesitated as to which was the better course.

May 24.—With Serjeant Best and Mr. Brougham, who recommended a separate defence.

May 26.—With Serjeant Best, Mr. Scarlett, and Mr. Brougham, when all advised a joint defence.

May 27.—With Mr. Topping, who concurred in the last recommendation.

June 1.—With Serjeant Best, who, on reconsideration, was still of opinion that a joint defence was preferable.

June 6.—With Serjeant Best, Messrs. Topping, Scarlett, and Brougham, when all the learned counsel finally advised a joint defence.

[2] Brougham had been retained very early in the case. Writing to Lord Grey from Lancaster on the 12th of March, he says: 'Of the Cochrane business I know nothing, except that I have received general retainers for the respective parties within the last three or four days.' *Life and Times*, vol. ii. p. 198.

inherited when young an ample private fortune, his education had been desultory, yet within a short time of his call he enjoyed the rare distinction of receiving praise from Lord Kenyon. He rapidly acquired an extensive and first-rate practice, and in 1799 he was made a King's Serjeant. His appearance, however, was by no means confined to the Court of Common Pleas, and in 1813 he was appointed Attorney-General to the Prince of Wales. His merits as an advocate are said to have lain in the sagacity, foresight, and prudence with which he conducted a cause, the rapidity with which he seized upon such points as turned up favourable to his purpose, the facility he ever displayed in extricating himself from unforeseen difficulty, and in the judgment and energy with which he addressed a jury. His activity was unwearied, he was alive and wide awake from the moment of the cause being called on to the close of the judge's charge, and he gave his clients the satisfaction of feeling that they were in the hands of one who had no other thought in his mind than their case. As to how far Serjeant Best was deserving of his reputation, and whether his clients had anything to complain of in his advocacy in this particular instance, those who have patience to read the following chapters must form their own opinion. Only one word more: so far from being a mere lawyer whose professional avocations had driven every other interest from his head and mind, Best was a man of the world and a man of pleasure, free alike from pedantry and affected ignorance, conversant with the ways of business and the seamy side of life, and whose judgment and opinion was as valuable to his clients as his advocacy. Of Topping there is little to be said, except that he was a sound lawyer, stood high in the profession, had a good city practice, and was famous at the Bar for disinterestedness and integrity. Such were the four men whom Lord Cochrane afterwards accused of mismanaging his case.

'Law. Mag.' vol. xxxiii. p. 811.

'Law Review,' vol ii. p. 169.

De Berenger was represented by Park and Richardson. James Alan Park (not to be confounded with James Parke, afterwards Baron of the Exchequer, and Lord Wensleydale)

had succeeded Lord Ellenborough as leader of the Northern Circuit, and had a large practice in the best class of London commercial work, dividing the lead for some years with Vicary Gibbs and Garrow. He was particularly famous for his knowledge of maritime and insurance law, but the clear and earnest nature of his advocacy and the profound interest he took in the success of his clients caused him to be eagerly sought after in all classes of cases. In private life he was known for his strict piety and for his attachment to the Church of England. A Scotchman by birth, he was mainly instrumental in obtaining the repeal of the infamous penal laws in force against the Scotch Episcopalian clergy. He had been a King's Counsel since 1799, and his promotion to the Bench followed a few years after this trial. Richardson, his junior, was a learned and industrious lawyer, who was raised to the Bench as a Justice of the Common Pleas in 1818, and who had acquired much reputation as what is now known as 'Treasury Devil.'

Holloway, Lyte, and Sandom had retained Serjeant Pell and Messrs. C. F. Williams and Denman. Serjeant Pell was leader of the Western Circuit, and also enjoyed a good business in town. He is described as being a vigorous and valuable advocate, but tautological and voluminous. His friend Brougham speaks of his 'zealous but disjointed elocution,' which, 'if not eloquence, was at least Pelloquence.' He subsequently retired from the Bar when in full practice, indignant at having been unjustly passed over for preferment, but he subsequently accepted a judgeship in the Court of Review in Bankruptcy, together with the honour of Knighthood. C. F. Williams, famed for his wit and his obliging disposition, was doing a considerable business as a junior, which, however, deserted him to a great degree when he took silk. His ultimate destiny was that of Chief Commissioner of the Court of Bankruptcy. Of the brilliant and high-minded Denman, the future Lord Chief Justice of the Queen's Bench, there is no need to speak. Last on the long list of Counsel came Mr. Peter Alley, who represented M'Rae, and was one of the leading

group at the Old Bailey, accustomed to daily conflicts with Gurney and Adolphus, with the latter of whom he had once gone so far as to fight a duel.[1]

Nor was the judge unworthy of such an occasion or of the formidable array of forensic ability. Edward Law, first Baron Ellenborough, like the vast majority of those who have risen to high judicial office, owed his advancement to his own great abilities and indomitable industry rather than to birth or aristocratic connections. Born in 1750, he was the fourth son of the Bishop of Carlisle, himself the son of a small country clergyman. Educated on the foundation of the Charterhouse, of which school he became captain, he proceeded to Peterhouse, Cambridge, and after an arduous and brilliant career graduated as 8rd Wrangler and Senior Chancellor's Medallist, in days long before the institution of the Classical Tripos. Adopting the profession of the law, to which he brought a great natural aptitude, he preferred to undergo the drudgery of special pleading below the Bar rather than enter incompletely equipped on his career, and consequently it was not till 1780, when nearly thirty, that he was called and joined the Northern Circuit. Here his success was rapid. To a sound knowledge of law, and especially of the minutiæ of pleading and evidence, he united great powers of speech and conduct, and a style of advocacy uncompromising but convincing. For the first seven or eight years, however, he made little headway in London, and it looked as though his would be the fate of so many men at the Bar whose celebrity has been purely local, and who, like Antæus, have only put forth their full strength when in contact with their native soil. In 1788, just after Law had obtained the rank of King's Counsel, there came, with the impeachment of Warren Hastings, the grand opportunity of his life. His connection with India was threefold: an elder brother had for many years served the East India Company with great distinction, earning for himself the glorious title of 'the

'A Naval Career during the Old War,' p. 194.

[1] The conflict, finally settled with pistols on the sands of Calais, had been commenced in Court with briefs wielded as bludgeons, and continued in the robing room with umbrellas.

just judge,' a sister was married to Sir Thomas Rumbold, and another brother, Thomas Law, was also in the service of the East India Company. Edward Law's great abilities were brought to the notice of the illustrious accused, and hence it was that a comparatively unknown counsel, little heard of in London, was chosen to play a leading part in the most famous State trial in our annals, and to measure himself with the most brilliant speakers in the Augustan age of Parliamentary oratory. Fox, Burke, Sheridan, Grey, and Windham had been selected by the Commons to conduct the impeachment, and it was in years of perpetual conflict with such adversaries as these that the future Chief Justice established his reputation. Unequal as the conditions must have appeared, it was not long before his iron inflexibility and unsparing determination began to produce their effect. When once the rhetoric of Burke and Sheridan had lost its glamour, and dry matters of fact and detail and evidence were reached, the trained superiority of the lawyer began to manifest itself.

Bohemia's plume and Genoa's bow, and Cæsar's eagle shield,

went down before the unswerving lance and firm seat of the north-country lawyer. After a trial of portentous length, Warren Hastings was acquitted, and it was recognised how large a share in his success was due to his advocate; Law sprang at a bound into the best class of London commercial business, while retaining the lead of his old circuit; and despite the formidable rivalry of Erskine at the Bar, and the scarcely veiled dislike of Kenyon on the Bench, he soon occupied a position only inferior to that of Erskine himself.

So far none of his success had been connected with politics. The son of a Whig Bishop of somewhat latitudinarian views, he was looked on coldly by Pitt; and his fierce struggles with Fox and the other Whig leaders during the Hastings impeachment had estranged him from the party to which he belonged by conviction and family association. After the French Revolution broke out he had gone with that section of the party which followed Burke

and the Duke of Portland, but he took no part in politics, and did not even attempt to enter Parliament. When, however, in 1801, Pitt resigned and Addington was called on to form an administration, he chose Law as his Attorney-General, and the latter accepted without hesitation. During his short tenure of office he rapidly achieved success in the House of Commons, and he discharged the duties of head of the English Bar with the same ability he had displayed in the conduct of his private practice. His career as a law officer was short; but, as we have seen, it included a prominent part in the movement for naval reform. In 1802, Lord Kenyon died, and Law succeeded by merit as well as by right to the office which he was to hold for sixteen years.

I am not writing a life or a panegyric of Lord Ellenborough, nor have I the presumption to venture on an estimate of him as a lawyer and a judge. This, I think, may safely be said, that he brought to the Bench the same painstaking diligence and the same sturdy independence that he had exhibited at the Bar. There have been more learned Chief Justices, there have been Chief Justices before whom it was more pleasant and easy to practise. He had many of the infirmities of a strong character—he was not free from impatience and irritability, and he did not suffer fools gladly; but no judge who ever sat upon the Bench surpassed him in his zeal for justice or his detestation of meanness. It has been truly said of him that 'there are none who have worn the ermine with more unsullied purity or borne the sword of justice with a firmer hand.' It may be added that no one has excelled him in the despatch of business or in the knowledge of the practical work of his Court. He was no respecter of persons, and entirely devoid of sympathy with those who warred against society and religion. But the circumstances of the time demanded a man of unbending strength of character. He had seen the oldest monarchy on the continent go down in ruin because her rulers lacked firmness and courage. An epoch such as that required qualities in a

Townshend: 'Twelve Eminent Judges,' vol. i. p. 299.

Chief Magistrate which are scarcely necessary in times of peace and order.

Lord Ellenborough has been accused of political partisanship, as it seems to me, with no justification. That he was a supporter of order, and enforced the law unflinchingly against those who strove to overturn it, can hardly be adduced as an argument. His speeches in the House of Lords give equally little support to this contention. On one occasion, that of the seizure of the Danish fleet in 1807, he took a strong line against the Government of the day, and his votes in the Melville impeachment were in constant opposition to those of Ministers, but his interference in debate was usually limited to the discussion of Bills affecting the legal profession. The one act of his career, when—following the precedent of Lord Mansfield in 1757—he entered the Whig Cabinet of 'all the talents,' formed by Fox in 1806 on the death of Pitt, which is supposed to have stamped him for ever as a politician, is explicable on other grounds. He joined the Government partly out of loyalty to Lord Sidmouth, and partly because in the 'delicate investigation' which the Cabinet was then carrying on with regard to the conduct of the Princess of Wales, there was great need of another trained lawyer in addition to Erskine. Out of the sixteen years he sat on the Bench he was in the Cabinet just thirteen months, and the majority of his then colleagues were those who for the rest of his judicial career were in opposition. It is now generally agreed that it was an error of judgment on his part, and the example has never been followed, but to gravely assert that because a man was for thirteen months a member of a Whig Government, he must therefore have been for the next twelve years the subservient tool of a Tory administration, is only worthy of those newspaper writers who within recent years have not scrupled to call Lord Ellenborough a corrupt judge.

State Trials, vol. xxix. p. 1478.

I cannot refrain from adding a quotation from a contemporary and anonymous pamphlet which gives better than anything I have seen what I believe to be the right estimate of Lord Ellenborough:—

If this noble person is peculiarly characterised by any quality more than another, it is by a firm, manly, courageous independence in the pursuit of right, which clamour would in vain attempt to daunt or interest to allure. His progress in the profession was marked by a stern contempt of anything which appeared like servility or degrading compliance; he never flattered those above him, nor attempted by improper blandishment to conciliate those whose favour might have promoted his interest. He made his way by his own strength, and the same manliness which enabled him so to succeed still distinguishes him in all he does.

'Remarks on the Case of Lord Cochrane,' p. 46.

Lastly come the jury. Their names are given in the shorthand report of the trial:—

Thomas Brown, Church Row, Aldgate.
Henry Septimus Wollaston, Devonshire Street.
George Spedding, Upper Thames Street.
George Miles, Gracechurch Street.
John Parker, Broad Street.
Lewis Loyd, Lothbury.
John Peter Robinson, Austin Friars.
John Hodgson, New Broad Street.
Thomas Wilson Hetherington, Nicholas Lane.
Richard Hall, Laurence Lane.
Richard Cheesewright, King Street.
John Green, Suffolk Lane.

And they are simply described as merchants.

CHAPTER IV

THE TRIAL—FIRST DAY

THE indictment contained eight counts, and its general effect in untechnical language was to charge all the defendants with unlawfully conspiring by false rumours and reports to induce the subjects of the King to believe that Napoleon Bonaparte was dead, and that peace would soon be made, and thereby to occasion a great rise in the funds, and to injure such of the King's subjects as should on the 21st of February, 1814, purchase any shares in the funds.[1]

It was opened to the jury by Adolphus, and then Gurney rose to present the case for the prosecution in a speech the tone of which has been severely, and to my mind unjustly, criticised on the ground of fierceness, but which has seldom been surpassed for lucidity and completeness. Much of it is a recapitulation of the events described in the preceding chapters, but to render intelligible the abstract of the evidence which follows it is necessary, at the risk of some considerable repetition, to give a full analysis of it.

Indeed, it is impossible to appreciate the conduct of counsel and the various incidents of the trial unless it is remembered that the minds of the jury were thoroughly saturated with the details of the fraud,[2] and prepared for the bulk of the evidence to be given on behalf of the prosecution. Nearly four months had

[1] It will be found *in extenso* in the Trial, pp. 3–13. The third count is set out in the report of the King *v.* De Berenger, 3 *Maule and Selwyn*, p. 68.

Trial, p. 293.

[2] Compare the words of Park in his address to the jury: 'You cannot have lived in this city, in which you are all merchants, for the last two months of your lives without having every hour of the day, and at every meal at which you sat down, had your ears assailed by accounts of this transaction. . . . I declare one could hardly go into any company where the discourse has not been turned upon this very circumstance we are now discussing.'

elapsed since the 21st of February. We have seen that the Stock Exchange Report containing a minute of the evidence had been published early in March, and then republished in Butt's pamphlet with a commentary. Lord Cochrane had given his affidavit to the world on the 12th of March. It had been followed by the affidavits of his servants and of the servants of De Berenger, all of which, together with other exculpatory evidence, had been comprised in Butt's pamphlet. The newspapers of the day had contained M'Rae's offer, and Mr. Cochrane Johnstone's letters to the Stock Exchange, and the unfulfilled promise from Butt to give an explanation of the traced bank notes. Several numbers of 'Cobbett's Weekly Register' had been devoted to abuse of the Stock Exchange, to comments on their report and evidence, and to demonstrations of the innocence of the defendants, while Lord Cochrane had sent to the 'Morning Chronicle' a correspondence that had taken place between himself and a Mr. Le Marchant, and De Berenger had supplied material for a pamphlet in his own defence.

Trial, pp. 212, 334.

infra, p. 145 *n.*

From these examples, which might be largely multiplied,[1] it will be seen that the task of the prosecution was not to unfold a new and startling tale, but to place before the jury in due order and collocation facts with which they were already well acquainted, and at the same time, by the introduction of evidence which had not yet been made public, to present a coherent story, and to leave it to them to say whether the case so presented was consistent with the innocence of the prisoners.

Bearing this in mind, Gurney's speech falls into two main divisions: the first of them is concerned with the events of the 21st of February, and with the efforts made by the accused in their various affidavits and publications to show that De Berenger and Du Bourg were *different* persons; this travelled over ground familiar to the jury. The second division is devoted to bringing home to Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt the pecuniary assistance afforded to De Berenger by means of which he was enabled to get away from London on the 27th of February, and of this a great part must have been new to his auditors.

After pointing out that by the law of England it was a crime to circulate false news with intent to raise the price of any commodity, and much more to conspire for that

Trial, p. 16.

[1] *E.g.* De Berenger's arrest had been the subject of more than one debate in the House of Commons. *Hansard*, vol. xxvii. pp. 969, 998, 1008.

object, Gurney urged that this crime was greatly aggravated when the object of the conspiracy was not merely to abuse public credulity, but to raise the public funds so that the conspirators might sell out to their own advantage and the injury of others. There was only one other possible aggravation, and that was for the conspirators to endeavour to poison the sources of official information and render the Government the instruments of their fraud. This offence so aggravated he charged upon the several defendants, and he undertook to show every one of them acting in furtherance and execution of it.

The moment, he said, chosen for the conspiracy was that most critical one when the Allies had received their first check on the road to Paris, when the army of Blucher had only been preserved from destruction by superhuman efforts, and when not only the events of the war, but the pending negotiations at Chatillon, were liable to materially affect the funds. If at such a moment false news were believed but for a single hour, the mischief to the public would be done.

The main agent in the plot he would prove to be De Berenger, a foreigner by birth, well qualified to pass as an officer, and whose pecuniary circumstances were such as to render a subsequent residence abroad desirable in his own interests. It would be shown that he appeared outside the 'Ship' Hotel at Dover early on the morning of Monday, February the 21st, dressed in a grey military great coat, a scarlet uniform embroidered with gold lace, a star on his breast, a silver medal suspended from his neck, and having a small portmanteau [1] with him. He announced himself as Colonel Du Bourg, an aide-de-camp to Lord Cathcart, and as the bearer of glorious tidings. After writing and despatching a letter to Admiral Foley, and repulsing the importunity of his questioners on the ground of fatigue, he departed for London in a post-chaise and four, which he paid for in one-pound notes, as the landlord declined to take the napoleons

[1] As to whether Gurney was correctly instructed in attributing the possession of this portmanteau to De Berenger may be doubted; see pp. 269–272, *infra*.

which he offered, but all along the road from Dover to London he paid his way with French gold. Rapid as he was, however, he had been anticipated in spreading the news, others were on the watch, and expresses reached London half an hour before Du Bourg himself.

Counsel then read the letter to Admiral Foley, given on a previous page, which had reached the Admiral between 3 and 4 A.M., and he pointed out that the haziness of the morning, which obstructed the working of the telegraph, prevented the news from reaching the Admiralty, and so completely realising the expectations of the conspirators. At Rochester the colonel repeated the news to the landlord; he did the same at Dartford; at Bexley Heath he enlarged on it to the post-boys, asking them not to divulge it until they had parted from him, and as the telegraph was here in sight of the road, he became aware that the state of the morning prevented it from working. He next inquired for a hackney-coach stand, and directed the post-boy to drive to the Marsh Gate. In driving there the latter noticed, on looking behind him, that his passenger had pulled up the blind of the chaise, and was seeming to avoid observation. At the Marsh Gate there was only one coach, and into this the so-called Du Bourg stepped after rewarding the boys with a gold napoleon each.

supra, p. 8.

This was about nine in the morning, and the glorious news, whether spread by the post-boys or coming through the other expresses sent up from Dover, reached the Stock Exchange shortly after ten o'clock, the hour when business commences there. At the opening the prices of stock were where they had left off on Saturday, and Omnium was at 27½ premium, when accounts came in of the arrival of an officer from Dover with news for the Government. Omnium immediately rose to 28, 28½, 29, and 30. At twelve o'clock the rise was checked; as no confirmation came from the Secretary of State, people began to doubt the news, and Omnium declined to 29, when suddenly, between twelve and one, a post-chaise drove through the city containing three persons, two of whom were dressed like French officers, who dispersed little billets announcing the news. By itself this

would have been nothing; as an auxiliary to the main plot it was of the greatest importance. After a triumphal progress through the city these gentlemen crossed Blackfriars Bridge and alighted near the Marsh Gate within a hundred yards of the spot where Colonel Du Bourg had taken his hackney-coach and disappeared. But their appearance on the scene had stamped certainty on the news, the drooping funds revived, and Omnium rose to 30, 31, 32, and 32¼. Not till the return of messengers, who had been sent to the office of the Secretary of State, was it discovered that there had been a gross and wicked deception. The funds returned to very nearly their former level, but large sales had been made, and many persons had been defrauded.

As a result the members of the Stock Exchange appointed a Committee to investigate the business, and their discoveries would be laid in evidence before the jury. It would be shorter to dispose at once of what they ascertained with regard to the underplot. It was established that the post-chaise came from North Fleet, near Gravesend, and had been ordered by the defendant Sandom, and that the defendants M'Rae and Lyte, who accompanied him, personated the French officers in it, M'Rae being the leading spirit; and a witness named Vinn would be called before the jury to show that the business had been in contemplation as far back as the previous Monday, the 14th of February. The Committee further ascertained that the immediate employer of these three men was the defendant Holloway, who himself was the holder of 40,000*l*. Omnium, which he disposed of on the 21st of February at a handsome profit. The jury would not fail to observe that this underplot could have had no effect but for the appearance of Du Bourg at Dover and his journey to London; otherwise the procession through the city with white cockades and laurel branches would only have excited derision; the prosecution could not establish that the parties to these two plots had ever met or consulted; but when the coincidence of plan and coincidence of time were considered, it would be impossible to doubt that these were two parts of one and the same conspiracy.

The Committee, having traced the pretended Du Bourg into a hackney-coach at the Marsh Gate, found out the hackney-coachman, and learnt from him that he drove at Du Bourg's direction straight to No. 13 Green Street, the house of Lord Cochrane, and it was an important consideration that Lord Cochrane had only resided there three days, having gone there on the Thursday evening preceding, a fact which could only have been known by a person on intimate terms with his lordship. The coachman further informed the Committee that, on arriving at No. 13, Du Bourg inquired for some person by the description of captain or colonel, and the servant answered that he had gone to breakfast in Cumberland Street.

The next step was to discover whether Lord Cochrane was a person who could have any possible interest in the success of the fraud, and the Committee ascertained that he had been a deep speculator in Omnium, that he had been so for one week only;[1] that on that Monday morning he had a large balance in hand, and that on that Monday he had sold out the whole of his balance at a profit. The Committee felt that it could be no accidental circumstance which brought the impostor to the house of a person so deeply interested in the success of the imposition; and, moreover, they discovered that Lord Cochrane had not acted alone in his speculations, but was closely connected with two other persons—Mr. Cochrane Johnstone and Mr. Butt—who were even more deeply involved, and who had commenced their transactions at an earlier date. 'Their purchases were the same, their sales the same; they seemed in these stock speculations to have but one soul.' On Saturday, the 19th of February, these three persons held between them a balance amounting in Consols and Omnium to very nearly a million—reduced to Consols it would come to 1,600,000*l.*—and on the arrival of the news on Monday morning they all three sold every shilling of stock they possessed. Trial, p. 29.

Their principal agent was a stockbroker named Fearn, and Mr. Butt was the active manager; he generally gave

[1] This was a mistake on Gurney's part, see p. 101, *infra*.

the directions for Lord Cochrane's purchases and sales, and payments and receipts on behalf of any of the three were made and given by Mr. Butt. Every day Fearn used to be visited at an early hour by Cochrane Johnstone and Butt, and on the morning of the 21st they came to the office at an early hour in a hackney-coach, having breakfasted, together with Lord Cochrane, at Cochrane Johnstone's house in Cumberland Place. Lord Cochrane came in the hackney-coach with them at least as far as Snow Hill, if he did not actually go on to the Stock Exchange. Besides Fearn, they had also employed two other brokers, Hichens and Smallbone, both members of the Stock Exchange, and an outside dealer named Richardson. For all that he knew they might have employed twenty other outsiders, for the Stock Exchange Committee had only authority over their own members. It would be found that these three defendants, linked thus inseparably together in their stock transactions, had disburdened themselves on the Monday of the vast weight of stock, under which they were groaning on the Saturday, at a profit of a little more than 10,000*l*.

When these facts had been ascertained, the Committee printed their report for the use of their members, the report got into the newspapers, and public attention was now directed to Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt. The Committee had had private information of the identity of Du Bourg with De Berenger, but finding that the latter had disappeared they did not publish it. The three incriminated persons at once took active steps to explain their conduct, and Mr. Butt and Mr. Cochrane Johnstone both threatened proceedings for libel.

Trial, p. 80.

There was one statement in particular of the Committee which roused Mr. Cochrane Johnstone's indignation. They had stated in their report that for the week commencing on the 21st of February, Mr. Cochrane Johnstone had taken an office for the use of Mr. Fearn in Shorter's Court, Throgmorton Street, close by the side door of the Stock Exchange. This office consisted of three rooms, in one of which were Cochrane Johnstone and Butt, in a second

Mr. Fearn, and in the third a Mr. Lance, a person also employed by them. This transaction Mr. Cochrane Johnstone absolutely denied, but the jury would find his denial contradicted not only by a witness, but by a letter under his own hand. The defendants had also indulged in other criticisms on the Committee's report, relating to the conduct and dress of the pretended Du Bourg. The alleged discrepancies would be cleared up by the witnesses who would be called before them.

It was felt, however, that such a defence would not suffice, and that Lord Cochrane must account for his visitor. Lord Cochrane accordingly came forward and made a voluntary affidavit before a magistrate.

After commenting in strong terms on this method of making a declaration, Mr. Gurney proceeded to read the affidavit of the 11th of March, which has been set out on page 35, and to examine it in detail.

It will be remembered that the gist of the affidavit, apart from the denial of participation in the fraud, was to the effect that Lord Cochrane, on the morning of the 21st of February, was occupied at a workshop in Snow Hill, in connection with a lamp patent, and learning that an army officer wanted to see him at No. 18 Green Street, he imagined it to be some one with news of an accident having befallen his brother, who was serving in Spain; that he returned home at once, and found De Berenger, with whom he was slightly acquainted, dressed in a green uniform, grey great coat, and military cap; that the object of the call was to induce Lord Cochrane to allow him to go on board the *Tonnant* as an instructor of musketry, a project which had previously been in contemplation; that Lord Cochrane was unable to assent to this, but at his request provided him with a civilian dress on his representing that he could not call on Lord Yarmouth, or return to the rules of the King's Bench, attired as he was.

As this affidavit touches a most essential part of the case, I give a portion of Gurney's speech verbatim :—

Lord Cochrane tells us that being at this manufactory of Mr. King's he received a note, the name of the writer of which Trial, p. 88.

he cannot read, yet, that he hastens home directly; engaged as he is in the superintending the making of a lamp for which he had a patent—engaged too in this tremendous stock account, which is, at this very moment, under the guardian care of Mr. Cochrane Johnstone and Mr. Butt, abruptly closing; he instantly quits the city, and hastens home to see a person whose signature he cannot decipher: and when he comes there he finds Mr. De Berenger to be the writer of the note, and he has all this extraordinary conversation with him about going on board the *Tonnant* to instruct the crew in sharp-shooting; and then when a negative is put upon Mr. De Berenger's application at least for the present, Mr. De Berenger tells him he *cannot* forsooth '*go to Lord Yarmouth or to any other of his friends in this dress.*' Why, I beg to know, cannot Mr. De Berenger go to Lord Yarmouth or any other nobleman or gentleman in the dress in which he waits upon Lord Cochrane? If he was dressed as Lord Cochrane describes, there could be no impropriety; but still more, '*or return to his lodging, where it would excite suspicion*'; *coming out* of his lodging in this dress might to be sure excite suspicion, for persons who saw him might imagine that a gentleman thus dressed was going a little beyond the rules of the King's Bench, but how could his *return* excite suspicion? If he was returning to his lodgings, why would he want any other dress, except that he was afraid to return to his lodgings in that dress because it would afford the means of tracing and detecting him? 'If I refused to let him join the ship now, he would join it at Portsmouth, *under present circumstances, he must use a great liberty, and request the favour of me to lend him a hat to wear instead of his military cap. I gave him one which was in a back room with some things which had not been packed up.*' Then we are to suppose that De Berenger was satisfied; he had got rid of this cap with the gold border which might excite suspicion, and he was content to go. No, says Lord Cochrane, that will not do. '*Having tried it,*' that is the hat, '*on, his uniform appeared under his great coat; I therefore offered him a black coat that was laying on a chair, and which I did not intend to take with me.*' We are, I presume then, to understand that he put on the black coat, though that is not expressly stated; 'he put up his uniform *in a towel, and shortly afterwards went away.*'[1]

[1] The italics are in the printed Report of the Trial.

Even taking Lord Cochrane's own version, he was guilty of a gross irregularity in assisting a person within the rules of the King's Bench to abscond, unless indeed he made this acknowledgment to conceal the fact that he lent the dress for another purpose; and on the very important point that Captain De Berenger was alleged by him to have worn a grey great coat, a green uniform, and a military cap, witnesses would be called before the jury to prove that the uniform was scarlet, embroidered with gold, and that there was a star on the breast.

Turning to the argument that had been used by Lord Cochrane and his associates, that it was in their favour that they had sold out early in the day and at a small profit, counsel maintained that in reality it was one of the strongest circumstances against them. They sold out because they knew that belief in the news would last for a very short time, and Gurney insisted that the amount of 10,000*l.* by no means represented their actual profit, which in reality was the total amount which they had been saved from losing; they had invariably been Bulls, they had raised the price of stock by their purchases, their purchases had vastly exceeded their sales, they had got completely out of their depth, and their imperative need was to get rid of their million of Omnium and Consols at the earliest practicable moment. Therefore the fact of their selling early and selling at a small profit could not avail them, but very much the contrary.

Counsel next adverted to the *alibi* defence set up on behalf of the absent De Berenger.

Gentlemen, it was felt that if the case rested there, they had done very little indeed, because no man could be so infatuated as to suppose that this story of De Berenger and his sharp-shooters would go down, unless that they showed that De Berenger was not Du Bourg; for if De Berenger was Du Bourg, it was very easily seen through, and therefore they set up for De Berenger (who was not forthcoming to set it up himself) that best of all defences if true, which is sometimes resorted to in Courts of Criminal Judicature, and is commonly known by the name of an *alibi*. It is, I may say, the best of all defences, if a man is

innocent; but if it turn out to be untrue, it is conclusive against those who resort to it. Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt published the affidavits of a man and a woman named Smith, who were the servants of De Berenger.

supra, p. 49.

These affidavits made out that De Berenger slept at home on the Sunday, February 20–21, and, of course, if true, proved that De Berenger could not be Du Bourg, who was at that time at Dover. Gurney read them to the jury, and said:—

Trial, p. 42.

> These were put out as complete and conclusive evidence that all the surmises of Du Bourg and De Berenger being the same person were absolutely mistaken; that the visitor of Lord Cochrane, Mr. De Berenger, was not and could not be the impostor Colonel Du Bourg. Gentlemen, at that time it was supposed Mr. De Berenger was safe out of the kingdom, and that no contradiction of these affidavits could ever take place.

After this vindication of their character, he continued, the conspirators had grown bold, and Mr. Butt demanded from the Stock Exchange Committee the payment of his gains made on the 21st, which had been impounded during the inquiry. This request was refused, and on the 8th of April De Berenger was arrested at Leith. Brought to London on the 12th, he was shown to various people who had seen Du Bourg at Dover and on his journey, and was identified by them all; and not only so, but by a Mr. Solomon, who had been drawn into the case in a very curious way. In the latter end of March a fisherman had dredged up from the Thames a bundle containing a scarlet aide-de-camp's uniform cut in pieces, a star, and a badge. This find was advertised, and Mr. Solomon, an army accoutrement maker, came forward and identified these as the clothes which, together with a grey coat and a military cap, he had sold on Saturday, the 19th of February, to a gentleman who said they were wanted to be sent into the country for a person to perform the part of a foreign officer. This gentleman was identified by Mr. Solomon as De Berenger.

These circumstances, counsel contended, absolutely dis-

posed of the affidavits, of the *alibi* of De Berenger, of the tales told by the Smiths, and of Lord Cochrane's sworn statement as to the green coat.

Gentlemen, what now becomes of these affidavits and of those who made them? What becomes of the *alibi* for Mr. De Berenger? What becomes of the affidavits of his servants, Smith and his wife? What becomes of Lord Cochrane swearing as he does to his green coat? Why do persons resort to falsehood, but because truth commits them? If any person who is found in suspicious circumstances, and is accused of the highest offence known to the law, resorts to lies to excuse himself, his life pays the forfeit, for no man resorts to lies unless he knows that the truth is absolute conviction. Why have these persons thus involved themselves deeper, but because, when they saw detection approaching them, they wished to ward it off, careless what were the means, careless who was the instrument, careless, too, who was the victim? Trial, p. 45.

Now, said Mr. Gurney, if the case was to rest there, what answer would the defence give to it, to this impostor Du Bourg, this real De Berenger, resorting to the house of Lord Cochrane, thus deeply interested in the success of the fraud, thus linked inseparably with two other persons equally interested, who, if a different kind of news had arrived that day, would have been absolutely ruined? For if, on the 21st of February, that news had arrived which just a month after did arrive, of the rupture of the negotiations at Chatillon, there would have been such a fall in the price of the funds that these three persons would have been losers to the amount of upwards of 160,000*l.*

And pointing out the dilemma in which the defence were as regarded the Smiths, he said:—

Will they put these persons whom they have made commit this moral perjury into that box and expose them to the guilt of legal perjury? If they do not put them there, 'they die and make no sign.' And if they do, I think I shall be able to show you who manufactured these affidavits, and how these servants, the Smiths, have been dealt with. p. 46.

It was possible that the defence might urge that De Berenger's visit to Lord Cochrane's house was a proof of

the latter's innocence; that if they had been criminally connected Lord Cochrane's house was the last one to which he would have resorted. That argument went on the assumption that in conspiracies all possible events were provided for, whereas it is notorious that something is always omitted, and here the omission was this:—

In settling their plan of operations they had forgotten to provide where De Berenger should resort on his arrival in town, and on his way his heart failed him. He dared not enter his own lodgings in a dress which would lead to detection, and he therefore drove to Lord Cochrane's to get rid of his dress. There, by Lord Cochrane's assistance, he did get rid of it and procured a round hat and black coat, in which he went safely and confidently home to his lodgings.

The question then would naturally arise—Was De Berenger a person known to the Cochranes? He was; and the prosecution was prepared to show that he was extremely well acquainted with them; that he was a visitor at Lord Cochrane's and at Mr. Cochrane Johnstone's; that he had boasted of his intimacy and of the assistance he had given them in stock-jobbing transactions, and that he had said that he expected to be handsomely rewarded, for by his means they would get a great deal of money.

This closed the first branch of Gurney's speech. The tactics adopted by him deserve observation. It cannot but be noticed that throughout the speech he keeps putting forward and demolishing hypothetical defences, as if he were in doubt what was the real line which the defendants would adopt, and, above all, whether they might not abstain from calling witnesses, and so deprive him of the right to a reply. It is to guard against such a contingency that he puts in and makes part of his case the affidavits of Lord Cochrane and the Smiths. We know that it was against the advice and wishes of counsel that witnesses were called for the defence. We shall see during the progress of the trial obvious traces of this reluctance, and it will, I think, clearly appear that it was not until a late stage in the case that it was finally resolved to call them.

Gurney next proceeded to say that the prosecution was prepared to prove that after the fraud these persons who

had employed De Berenger paid him and sent him away. De Berenger had finally left his lodgings on Sunday, the 27th of February, and it would be proved that on the 26th Mr. Cochrane Johnstone came to his lodgings and left a letter for him. When he was taken at Leith certain books, papers, and bank notes were found in his possession, and to these latter the attention of the jury would be particularly called, for they furnished conclusive proofs of the guilt of the conspirators.

Before proceeding, however, to the notes, Mr. Gurney read a memorandum of De Berenger found in a little book in his letter-case, which appeared to contain the heads of a letter written on the 1st of March to Cochrane Johnstone:—

Gentlemen, there are some parts of this memorandum which I cannot interpret; perhaps Mr. Cochrane Johnstone will give us the letter, and that will supply the explanation. It begins: 'To C. J., by March 1st, 1814, 350*l.*, 4*l.* to 5,000, assign one share of patent, and 1,000*l.* worth shares of Mr. De Beaufain at Messrs. H. to their care.' Now comes the important part; I should tell you, gentlemen, that Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt allege that their gains were not quite so great as the Committee of the Stock Exchange estimate them to have been. They say that the gains of the three were only 6,500*l.*, of which Lord Cochrane's share was 1,700*l.*, and Mr. Cochrane Johnstone's and Mr. Butt's were 4,800*l.* Mr. Butt was the person who transacted the business, being more a man of figures than the other two, and, acting as their agent, he had rendered his account to Mr. Cochrane Johnstone; and it should seem as if Mr. De Berenger's compensation was a percentage upon their gains, for he writes thus: 'Believe from my informant 18,000*l.* instead of 4,800*l.*,' he thinks their profit was four times as much as they say; 'Suspicious that, Mr. B.' Who can that be except Mr. Butt? 'Does not account correctly to him as well as to me. Determined not to be duped. No restrictions as to secrecy, requesting early answer.'

Trial, p. 50.

supra, p. 45.

In the memorandum-book also were found the figures 450 and 90 summed up together, making 540*l.*; names and sums were found there amounting to 163*l.*; there was also a statement of expenses on the journey, and it would

appear that De Berenger had had in his hands 540*l.* The notes making up this sum had been traced to Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt, and their payment was fixed to a time between the fraud and the absconding of De Berenger.

Trial, p. 51. It would be proved that on the 10th of February Mr. Fearn drew a cheque payable to Mr. Butt for 56*l.* 5*s.*, which was paid partly in a fifty-pound note, one of those found on De Berenger at Leith. On the 16th [1] of February Mr. Smallbone gave Lord Cochrane a cheque for 470*l.* 19*s.* 4*d.*, which was paid in a 200*l.* note, two 100*l.* notes, a 50*l.* note, some small notes, and the fraction in cash. The 200*l.* note was, by order of Mr. Butt, exchanged by Christmas, a clerk of Fearn's, at Bond's, on the 24th of February, the Thursday after the fraud, for two 100*l.* notes, which the same clerk carried to the Bank and exchanged for two hundred 1*l.* notes, which he brought back and gave to Fearn, who put them into the hands of Butt, and Butt in Fearn's presence handed them over to Cochrane Johnstone. Of these two hundred 1*l.* notes it would be proved that eleven were passed at Hull, De Berenger having been at Hull at that time; that seven more had come into the Bank from that country marked with De Berenger's name, and that sixty-seven were found in De Berenger's writing-desk at Leith.

There were the other two notes of 100*l.* each. On the same day, the 24th of February, another clerk named Lance went to the Bank—and immediately after Christmas, for the numbers follow each other in the bank books—and got two hundred other 1*l.* notes, which he gave to Butt. Of these second two hundred, forty-seven had come into the Bank with De Berenger's name upon them, and forty-nine more had been found in his desk. There still remained the 50*l.* note. This it would be proved that Lord Cochrane himself paid away to his own coal merchant.

[1] It is so printed in the *Report of the Trial* from the shorthand notes, but, as will appear from pp. 231, 235, and 238 of the *Trial*, the correct date is February 19*th*. In another place on p. 231 of the *Trial* this cheque is described as being dated on the 10th. There is no doubt that the 19th is the proper date, and the variant figures 10, 16, 19 are the result of careless printing or writing.

On the 25th of February another cheque, this time on Prescott & Co., had been paid to Butt by Lance for the sum of 98*l.* 2*s.* 6*d.* This was paid in notes of 50*l.* and 40*l.*, and the balance in small notes. The memorandum contained an entry 'S. 50*l.*' It would be proved that Smith (De Berenger's servant) paid this very 50*l.* note to a Mr. Seeks, and that De Berenger himself paid the 40*l.* note to a Mr. Bray at Sunderland. Adding all these sums together, they amount to 450*l.* and to 90*l.*, the very figures entered in De Berenger's memorandum-book found in his writing-desk when he was taken. Could the jury doubt that De Berenger had received these notes from the defendants as a reward for his criminal service? Mr. Butt, in a letter to the 'Morning Chronicle' on the 18th April, had asserted that astonishment would cease when it came to be seen in what manner De Berenger became possessed of the notes in question. Mr. Butt therefore knew how the notes came into De Berenger's hands, and he would now have the opportunity of showing it by evidence.

p. 52.

supra, p. 51.

Lastly, and after the arrival of De Berenger in London, Mr. Cochrane Johnstone wrote a letter to the chairman of the Committee of the Stock Exchange, enclosing one from the defendant M'Rae. M'Rae's letter stated that he was prepared to lay before the public the names of the persons who carried into effect the late hoax practised on the Stock Exchange, provided that his terms were acceded to. From Mr. Cochrane Johnstone's letter it appeared that these terms were the payment of 10,000*l.* to be deposited in some banker's hands in the names of two persons to be nominated by himself and to be paid on the conviction of the offenders. Receiving no answer to these communications, Cochrane Johnstone wrote another letter, in which he said that both he and Lord Cochrane and Mr. Butt were prepared to subscribe 1,000*l.* each in aid of the sum required by M'Rae. This modest proposal had failed to meet with acceptance.

supra, p. 50.

In conclusion, the learned counsel called upon the jury to survey the whole of the transactions,

You find that the principals—those who were to benefit above [illegible]—were the Cochranes and Butt; Holloway, in a smaller [illegible] but still not slightly; De Berenger, the principal agent; [illegible] subordinate agents, who could have done nothing [illegible] the foundation had been laid previously by De Berenger [illegible] the character of the officer from Dover; his news had had [illegible] effect upon the funds even before the second arrived. Though [illegible] cannot be shown, as in many cases it cannot, that these parties [illegible] and conferred and assigned to each his respective part, yet [illegible] you find a coincidence in object, and a coincidence in time, [illegible] you find the mode of execution precisely the same, is it possible to doubt that these underplotters were the agents of the great conspirators, that the great conspirators were the authors of the plan, and that the others were executing their subordinate part?

Gentlemen, I have given you the best assistance in my power to understand and apply the evidence which will be laid before you. They whom I represent have no wish but that justice should be done; they have investigated this subject with great care, with great assiduity, with great diligence, with great anxiety. They have had no personal difference with any of these defendants; they have never come in collision with them to have the smallest possible difference; they have no wish but justice, and I am sure that at your hands they will attain that justice; and your verdict to-day (which, I am sure, after you shall have heard the whole of this case, will be a verdict of guilty) will be a most salutary verdict. It will show the world that as there is no man beneath the law, so there is no man above it. It will teach evil-minded persons the absurdity of expecting that [illegible] of fraud can be so framed as to provide for all events. It will teach them that no caution can insure safety. That there is no contrivance, that there is no device, no stratagem which can shield them from detection, from punishment, and from infamy.

How far this opening speech was borne out by the facts deposed [illegible] and to what extent the Counsel for the defence succeeded in breaking it down, will be seen from the [illegible] pages; but before summarising the

[illegible] have 'most liberally acknowledged that he had [illegible] at the bar' than this effort of Gurney's. *Law* [illegible]

evidence it is only fair to slightly anticipate matters and admit that in one or two details Gurney was unable to substantiate facts which he had opened to the jury. One of these related to the napoleons which the supposed Du Bourg offered to Wright, the landlord at Dover, and to the one-pound notes which he substituted for them on the landlord demurring to the French gold. Wright was too ill to attend in court, and so this could not be gone into, and his absence, as will be seen, also caused a serious hitch in the proof of the letter to Admiral Foley, describing the nature of the good news. The expedient by which this was got over will be found at p. 89, but it put the prosecution in a serious difficulty very early in the day.[1]

Trial, p. 88.

A more conspicuous difficulty, and one which proved to be insurmountable, arose with regard to the cheque for 56*l.* 5*s.*, which Gurney asserted was drawn by Fearn on Bond, payable to Butt, and part of the proceeds of which—a fifty-pound note—he alleged to have been found on De Berenger at Leith. Evans, however, the clerk to Messrs. Bond, who had paid the cheque, failed to appear, though he had been served with a subpœna, and this part of the case came to nothing. Mr. Gurney was also wrong in stating that Lord Cochrane had been a speculator for one week only, and his suggestion that Lord Cochrane might have gone on to the Stock Exchange on the morning of Monday, the 21st, was not borne out by the evidence of Fearn. A further slip in connection with the exchanging of the big notes for smaller ones will be fully noticed in its proper place.

p. 51.

p. 254.

Compare Trial, p. 28, with p. 167.

Pp. 164, 165, and *infra*, p. 100.

infra, pp. 120*n*, 140.

The first and most essential duty of the prosecution was to prove the identity of De Berenger with Du Bourg. This identity was admitted by De Berenger very shortly

[1] The impossibility of calling Wright may very well have been the reason why Gurney abstained in his speech from any further allusion to these notes, but it will be remembered that, in the minutes of evidence taken before the Stock Exchange Committee, four one-pound notes paid away to Wright by Du Bourg were proved to have been in the hands of Messrs. Bond, the bankers, between one and two o'clock on Saturday, the 19th of February, and that on that day they had given fifty one-pound notes to a clerk of Fearn's, who had admitted handing them to Mr. Butt. This was not proceeded with at the trial, and I suggest Wright's absence as the reason.

supra, p. 29.

after the verdict; it is common ground to all who have discussed the trial, and it is only when the pretended messenger is brought within a few miles of London that the question of his dress becomes important as bearing on the truth of Lord Cochrane's affidavit.

It should be said, however, that the prosecution were able to present this part of the case with extraordinary completeness. From his appearance outside the Ship Inn at Dover, at one o'clock on the Monday morning, Du Bourg was traced step by step to Lord Cochrane's house in Green Street, without being allowed out of sight for a
Trial, p. 88. single moment. The landlord of the Ship was, as we have seen, too unwell to be present, but four men [1] were called who had seen Du Bourg at the inn; one of them, named St. John, was a newspaper correspondent, acting for the 'London Traveller,' and was personally interested in the funds; and it may not unfairly be presumed that it was in his interest that the express, which reached London before Du Bourg, was despatched. These witnesses were in substantial agreement as to the latter's costume. St. John, the most intelligent of them, described him as wearing a scarlet coat with long skirts buttoned across, a red silk sash, grey pantaloons, a grey military great coat, and a fawn-coloured sealskin cap with a gold band round it. There was 'something of a star' on his military dress.

To assist the witnesses, a facsimile of the uniform which had been supplied, on the 19th of February, to a man whom the prosecution maintained was De Berenger, was produced in Court, and the witnesses agreed that Colonel Du Bourg was similarly attired.

Mr. Park cross-examined rigidly, and elicited some discrepancies as to the colour of the lace and the shape and material of the cap, but considering that Du Bourg had been interviewed by candle-light, this did not go far. The identification of the man apart from his dress seemed complete. It will be remembered that in this case, tried at the Guildhall and not at the Old Bailey, there was

[1] Marsh (Trial, p. 58), Gourley (*ib.* p. 66), Edis (*ib.* p. 71), and St. John (*ib.* p. 76).

no dock full of prisoners. The other defendants had not been required to surrender. De Berenger was there not only for purposes of identification, but because he was in custody for a violation of the Alien Acts; still, he occupied no prominent position; he sat in Court amid the crowd, probably next his attorney, and as the witnesses came in they were told to look round the Court until they picked out their man without his being pointed to them. De Berenger at one period of the case was requested to stand up, but Park protested against his being 'shown about like a wild beast,' and Lord Ellenborough said 'he will make his election whether he will stand up or not.' Gurney in his reply, and Lord Ellenborough in his summing-up, alleged that it was the most complete identification they had ever known.

Hansard, vol. xxviii. p. 787.

Trial, p. 61.

p. 471.

With this part of the case was linked the sending of the letter to Admiral Foley,[1] the Port Admiral at Deal. The letter was taken on horseback by a boy called Ions. The admiral was called, and said that he got the letter about 3 A.M., when he was in bed. As the weather was hazy, he did not telegraph the news to the Admiralty, and he subsequently sent the letter on to Mr. Croker. He added that he did not believe the letter. Both Mr. Park and Serjeant Best objected to its being read, on the ground that in the absence of the landlord of the Ship Inn, who had given it to Ions, the letter was not brought home to the supposed officer. Serjeant Best contended that the prosecution must either prove the letter to be the handwriting of De Berenger or trace it regularly from his hands. This contention was supported by Lord Ellenborough, and Gurney said he would at once identify it by

p. 85.

p. 86.

p. 88.

[1] Admiral Sir Thomas Foley had played an honourable and distinguished part in most of the great naval victories of the war. He had held an important position in the battle off Cape St. Vincent, had led the English line into action at the Nile, and was Nelson's flag captain at Copenhagen. The failure of his health compelled him to refuse an offer to serve in the fleet at Trafalgar, and since 1811 he had been commander-in-chief in the Downs. It must have been felt that not the least reprehensible part of the conspiracy was the attempt to make this grand old sailor the instrument of a despicable fraud.

proving the handwriting, for which purpose he called Mr. Lavie, the attorney for the prosecution.

The whole of this passage-at-arms is so interesting, as illustrating the relations between Bar and Bench during the trial, that I give it in full from the shorthand note:—

Trial, pp. 88-90.

Mr. Park: I object, with great deference to his lordship, to that letter being read; the evidence does not bring home that to the supposed officer, who is said to be Mr. De Berenger. It does not appear from any evidence to have come out of his hand. It reaches this boy by the communication of Mr. Wright, who has not been called.

Mr. Gurney: I will ask the witness (Admiral Foley) as to the reason of Mr. Wright's not being here—he is very ill, is not he?—*A.* He is extremely ill.

Mr. Park: My lord, that does not alter the law of evidence. I submit there is a chasm in that chain that precludes their reading the letter as evidence against Mr. De Berenger. I do not mean to say that might not be supplied in the absence of Mr. Wright, but that letter lying before your lordship's officer is not identified to be the very paper which issued forth from this supposed person. It was delivered to this youth at the door of the inn by Wright, who is ill, and absent from illness; he is not present to tell your lordship from whom he received that, and there is a chasm in the chain of evidence; nor does the admiral say he received the letter from this boy; he received it from a maid-servant.

Lord Ellenborough (*to Admiral Foley*): When the boy came into your presence I suppose you asked him about this letter?—*A.* I did.

Q. Did he recognise that as the letter he had brought?—*A.* He did.

Mr. Park: With deference to your lordship, I should submit the letter was then open. The boy had delivered the letter shut to the maid-servant, and, I should have submitted, it is quite impossible that this youth could distinguish the letter; nobody doubts it is the letter, but that must be proved by legal evidence.

Lord Ellenborough: It is *primâ facie* evidence. I do not speak now of the communication from De Berenger (supposing he is the person) of the letter to the boy. I do not say anything upon that objection of yours, but that the letter which reached

Admiral Foley was the letter the boy brought, I think no human being can doubt.

Mr. Park: But still, upon the original point, I submit it is not so proved as to be read in evidence.

Lord Ellenborough: Yes, you may resort to that if you please; the witness said he wanted an express horse to send to the admiral at Deal, and then an express horse was got, and something was carried to the admiral at Deal. That is the evidence as it stands.

Mr. Serjeant Best: So far the evidence goes, my lord. They now want to make the contents of that letter evidence, but before they can do that they must either prove that letter to be the handwriting of Mr. De Berenger, or trace that letter regularly from the hand of Mr. De Berenger: they have no such evidence, but all they say is that Wright, the landlord of the inn, took the letter out of the inn and delivered it to the boy at the door, the boy never having seen Mr. De Berenger, nor they having the smallest evidence whatever to connect the boy with him.

Lord Ellenborough: If there had been, the question would not have arisen.

Mr. Serjeant Best: I submit there is nothing to connect that letter with this person, and if it is the handwriting of Mr. De Berenger I should think they would have no difficulty in proving that. There were other gentlemen waiting for information from France, as we hear from the witnesses, and if this letter is read, Mr. De Berenger and the other defendants may be made responsible for that letter, which may have been written by one of those other persons.

Lord Ellenborough: I only want to get first all the facts relating to this letter. I cannot find anything beyond that he wanted an express horse to send to the admiral at Deal.

Mr. Gurney: And that a sheet of paper was brought to him to write.

Lord Ellenborough: That he was preparing to write a letter, and that he wanted an express horse to carry it, but as to the immediate identification of that letter you lose the intervening proof by the absence of Mr. Wright.

Mr. Gurney: My lord, if there is any sort of difficulty about it, I will identify it at once by proving the handwriting, but the gentleman to prove that felt a delicacy in consequence of his being the attorney for the prosecution.

Mr. Germain Lavie, the gentleman referred to, swore that he had often seen De Berenger write, and that he verily believed that this was his handwriting. He was severely cross-examined both by Park and Best, who were pulled up by Lord Ellenborough when they proceeded to put to him
Trial, p. 92. various other letters in their possession. Lord Ellenborough insisted that these letters should be kept for their own case, and that they were acting most irregularly in tendering evidence at a time when it was not open for the defendant to do so. This little skirmish is important, as indicating that the defence had not yet decided as to whether they should offer evidence, and were trying to get their own documents in as part of the prosecutor's case. The letter to Admiral Foley was then allowed to be read, and Best rose to explain that he did not ask his
p. 94. questions of Mr. Lavie with a view to offer handwriting against handwriting, but to prove 'papers that I mean to offer in evidence.' [1]

pp. 95-118. The scene now shifted. The postboys were called who had driven Du Bourg the successive stages from Dover to Canterbury, from Canterbury to Sittingbourne, from Sittingbourne to Rochester, from Rochester to Dartford, and from Dartford into London. The darkness of the morning prevented the witnesses at the earlier stages from being able to identify the person they had carried, but the unusual circumstance of the payment in napoleons
p. 100. stamped the occasion on their memory. At Rochester, however, Du Bourg had come into the house, taken some refreshment, and held a considerable conversation with the landlord, Wm. Wright, the brother to the proprietor of the
p. 101. Ship at Dover, who gave a very particular description of his dress—a pepper-and-salt great coat with a military scarlet coat under it, very much trimmed down the front with gold lace. On the military coat was a star and something suspended, either from the neck or the button, which Du Bourg told him was some honour of a military order of

[1] Presumably these were letters and notes of De Berenger's in connection with the alleged business transaction with Cochrane Johnstone, pp. 156–157, *infra*.

Russia. He had also a military cap with a broad gold band of lace round it. In answer to his questions Du Bourg gave him some details as to the great victory, and it was obvious that Wright had derived some inkling of the news from a previous express. Replying to a juryman, Wright said he had omitted to mention that there was a large white cockade hanging down very dirty, as if it had been a long time worn. Wright said he had no doubt whatever as to De Berenger being the man; on the other hand, Tozer, the innkeeper at Dartford, failed to recognise anyone in Court. Gurney requested that De Berenger should be asked to hold his head up, and Lord Ellenborough said it would be quite permissible to ask the witnesses straight out 'if that be the person.' It was always done at the Old Bailey in matters of life and death; 'but,' he added, 'to be sure, when it is proved in the way it has been, it can be of very little consequence.'

Trial, p. 109.

p. 110.

The postboy who had ridden the last stage in from Dartford was Thomas Shilling. It was then nearly daylight, though a thick frosty morning. When Bexley Heath was reached, Du Bourg told him not to hurry the horses, for his business was not so particular since the telegraphs could not work, and asked him not to take any notice of the news as he went along, but he might tell any of his friends as he returned. At Shooter's Hill Du Bourg asked where the first hackney-coach stand was, and, on learning that it was at the Bricklayers' Arms, said that would not do, as it was too public. Was there not one in the Lambeth Road? Shilling said yes, and drove him there to the Three Stags, but there was no coach on the stand. The stand at the Marsh Gate was then tried, and a solitary coach was found, alongside of which he pulled up. Shilling called to the coachman; the waterman opened the door of the coach, Shilling jumped down and opened the chaise, and Du Bourg stepped from one into the other. As the chaise pulled up the postboy noticed that the side blind, which had previously been down, was drawn up.

p. 110.

p. 112.

p. 113.

p. 113.

Shilling positively identified De Berenger as the man, and swore that he was wearing a dark fur cap with white

lace of some sort round it, whether gold or silver he could not say, and had a red coat on underneath his
Trial, p. 114. outer coat; this red coat he saw down as far as the waist, but he did not see the skirts of it; he thought it was turned up with yellow, but he would not like to swear
p. 115. that; it had some sort of a star upon it, but he was not close enough to swear what it was. Cross-examined by Mr. Richardson, he denied having said that he would swear for the side that paid him best. He had heard of the reward offered by the Stock Exchange, and had received 5*l.* from them towards his expenses.[1] On the question of identification he was unshaken. The waterman, Bartholo-
p. 119. mew by name, remembered the fact of a gentleman with a brown cap, dark drab military coat, and scarlet coat under it, getting into a hackney-coach driven by Wm. Crane on the 21st of February, and he heard the gentleman order the coach to drive to Grosvenor Square, but he would not say more than that De Berenger was like this gentleman. In cross-examination he allowed that the dress made such an alteration that he should hardly know him.

p. 120. The prosecution then called Richard Barwick, a clerk to Messrs. Paxton & Co., bankers, in Pall Mall. On the Monday morning he was passing near the Marsh Gate, when he observed a gentleman getting into a hackney-coach from a post-chaise and four, which, from the condition of the horses, had evidently galloped at a great rate. Hearing in the crowd that it was a general officer arrived with news, he followed the coach past the public offices as far as the

[1] In the *Autobiography of a Seaman* (vol. ii. p. 356) the writer says, referring to Shilling, that 'the postboy admitted on the trial that he had several previous examinations, and that he received 52*l.* for his evidence.' Turning to the shorthand note (Trial, p. 117) we find that this question was put to him: 'You have been examined upon several occasions before this? Answer: *I have been examined at the Stock Exchange and before the grand jury, nowhere else.*' After this it is not surprising to find the 5*l.* received towards his expenses transformed into 52*l.*

It should also be noted that though in his evidence before the Stock Exchange, which had been printed and was in the possession of the Defence in Court, he had spoken of Du Bourg having a small portmanteau
supra, p. 28. which was laid on the seat of the chaise, he was not asked a question as to this either in chief or in cross-examination. The importance of this omission
infra, pp. 269–272. will appear in a later chapter.

Haymarket. The coach, however, did not stop anywhere, and as it was nine o'clock he turned off to go to his business. He had seen the face of the supposed general officer at the window of the coach, and noticed his cap as being like that of a German officer, but being shown De Berenger in Court he would not say more than that it was something like him.

William Crane, hackney-coachman, number 890, deposed to taking up a gentleman who had come in a chaise from Dartford at the Marsh Gate on the Monday morning. He was directed to drive to Grosvenor Square, and, having arrived there, the gentleman put down the front glass and told him to drive to No. 13 Green Street. There the gentleman got out and asked for Colonel or Captain somebody, and was told he was gone to breakfast in Cumberland Street. The gentleman then asked if he could write a note to him, and went into the parlour, but before doing so he discharged the witness, giving him 4*s*. Witness asked for another shilling, and the gentleman took out a bit of a portmanteau that he had and a sword, went in, and then came out into the passage and gave the extra shilling. The portmanteau, witness said, was a small black leather one, big enough to wrap a coat in. Asked if he saw the gentleman in Court, he said, 'I think this is the gentleman here,' pointing to De Berenger. Trial, p. 122.

No question had been asked in examination-in-chief as to the gentleman's dress, but in cross-examination as to identity Mr. Richardson said, 'You do not pretend to be able to recollect every person you carry in your hackney-coach every day?' 'No,' answered Crane, 'but this gentleman that I took from a post-chaise and four, when he got out at Green Street, I saw that he had a red coat underneath his great coat.' p. 124.

The prosecution next proceeded to prove the finding of the clothes in the river and the purchase of them. A waterman named Odell, when dredging for coals with a drag above the Old Swan Stairs, had fished up on the 24th of March a bundle tied up with a piece of chimney line, or window line, in the cover of a calico chair bottom. The bundle was sunk with pieces of lead and screws, and con- p. 125.

tained two sleeves of a coat, a coat cut to pieces, embroidery, a star, and a silver coat of arms with two figures upon it. A bundle of clothes, with star, &c., was shown to the witness, and identified by him as the sort of things that he
Trial, p. 127. picked up, but he said that the star [1] was not then in its present state, it was in half, and one of the birds was off.

p. 127. The Secretary of the Stock Exchange, Mr. Wade, confirmed this fact, namely, that the star when received by him was in two pieces, but was afterwards sewn [2] together for the purpose of being exhibited. Mr. Gurney informed the Court that the badge was an Order of Masonry, and the Star a Russian Order of Knighthood, the Order of St. Ann.

p. 128. Mr. Solomon, a military accoutrement maker, deposed to having sold to a gentleman on Saturday, the 19th of February, a military great coat and foraging cap, and a scarlet regimental coat, the uniform of an aide-de-camp fitted for a staff officer. He also sold to the same person a star and badge. The cap and coat were exactly the same as those exhibited in Court, which had been made on the same pattern. He could swear to the identity of the star and badge, and he believed the fragments of gold lace and discoloured scarlet coat fished out of the Thames to be what he had thus sold. The purchaser said they were wanted for a person who was to perform the character of a foreign officer, and were to be sent into the country that evening. He took them away with him in a coach, and

[1] The following description of the star and badge is given in the notice posted by the Stock Exchange Committee on Saturday, March 26, recording Odell's discovery: 'The star had a red cross in the middle, surmounted by two angels supporting a crown, and surrounded by the following motto, worked in silver twist on a red ground:—AMAM: JUS: PIET: FIDEM. The badge appears to belong to some Order of Masonry, and consists of a silver radiated cross, having an eagle on one side and a pelican feeding her young (affixed to a compass) on the other.' See Butt's pamphlet, p. 14.

[2] From this, and the description of the star given above, it seems clear that it must have been stitched on to the coat, and so could not have been easily removed from it. If the star is considered as part and parcel of the scarlet coat and not removable at will, it affords an answer to some of the criticisms contained in the 'Letter to Lord Ellenborough'; see also p. 260, *infra*.

he had a small portmanteau with him. The witness was unable to swear to the identity of the purchaser with De Berenger.

Launcelot Davidson and his wife were then called. In the preceding February they had a house in the Asylum Buildings, within the rules of the King's Bench, where De Berenger and his servants, the two Smiths, lodged. Their evidence went to prove that De Berenger quitted his house attired in a new great coat about eleven on the morning of Sunday, the 20th of February, and that they did not see or hear anything of him until the afternoon of the following day. This evidence was unshaken in cross-examination, but it appears not to have been correct. In the course of 1816 Lord Cochrane caused Mr. Davidson to be prosecuted for perjury, and at that trial it was proved that De Berenger had actually gone down to Dover on the Saturday night.[1] The jury found to this effect, but acquitted Davidson on the ground that it was a *bonâ fide* confusion between one Sunday and another. Apart from this, however, Mrs. Davidson swore to a gentleman leaving a note at her house for De Berenger on the evening of Saturday, the 26th of February, the day before he finally quitted them. She had subsequently been down to the Crown Office with Mr. Lavie, and had there identified the gentleman who was striking the jury as the one who had left the letter. That gentleman was Mr. Cochrane Johnstone. She also said that De Berenger, who was apparently clean-shaven on his appearance in Court, had worn whiskers when he was her lodger; and Solomon, the last witness, described the man who purchased the uniform from him as resembling De Berenger, except that the customer had whiskers.

Trial, pp. 182,183.

p. 184.

This evidence closed the part of the case relating to the identification of De Berenger with Du Bourg. With it the fate of De Berenger was sealed; and that his counsel fully recognised the gravity of the situation is amply proved by their writing the following memorandum:—

[1] Vide *infra*, p. 261.

We both agree in thinking that if we were to attempt the *alibi*, it would not only be of no avail against the body of proof now given, but would probably end in the witnesses being committed to Newgate; and when the day of punishment comes, making or attempting to make such a defence will probably enhance that punishment by the addition of the pillory. No power on earth can prevail in this case, if the prosecutors prove the rest of the case; and we dare not, in justice to our client, allow him to heap greater destruction upon himself without raising our warning voice against so mad a project.

J. A. PARK, J. RICHARDSON.[1]

How ineffectual was the warning, and how justly the prediction was verified, the sequel will show. But apart from De Berenger the peril of the other chief defendants was becoming manifest. If the identification had broken down, there was hardly the shadow of a case against them. Once establish, as the prosecution had now done, that the adventurer who visited Lord Cochrane came red-handed from the commission of the fraud, and the whole of the facts assumed a very different complexion.

Trial, p. 141.

Meanwhile, however, Gurney proceeded to the underplot of M'Rae, Sandom, Lyte, and Holloway. A certain Thomas Vinn swore that he met M'Rae at the latter's request at a coffee house on the 15th of February. M'Rae told him that he thought he had an opportunity of making his fortune; that he had a scheme in contemplation, employed by men of affluence and consequence, and that he thought no man more competent for it than Vinn. There was nothing, he said, of moral turpitude in it, but it was practised daily by men of the first consequence; it was nothing more nor less than biting the biters, or, in other words, a hoax upon the Stock Exchange. It was to be performed by going down to Dartford, Folkestone, or Dover that very evening, and it would be necessary for them both to have dresses appropriate to the character of French officers. Here Vinn said that he stopped him, and indig-

[1] This memorandum is taken from a pamphlet entitled, 'De Berenger Detected,' and published May 1816, by W. Jackson, in Lord Cochrane's interest. It is there said (p. 13) to have been given to De Berenger by his counsel previous to the examination of the *alibi* witnesses, and to have been shown by him to a person who sent a copy of it to Lord Cochrane.

nantly replied that he would as soon be concerned in a highway robbery. He left M'Rae immediately, and made the story public, but without mentioning M'Rae's name as the tempter. It appeared, however, on cross-examination that in spite of his indignation he had designated another young man as suitable to be engaged for the 'hoax,' and had furnished M'Rae with the French phrases, '*Vive le Roi*,' '*Vivent les Bourbons*' in writing. On his reiterating the term 'hoax,' Lord Ellenborough interrupted, saying, 'I beg you will not call it by that name, such an offence as this.' Trial, p. 144.

It was then proved by Sarah Alexander that late on the night of Sunday, February 20th, M'Rae had come in to his house in Fetter Lane, bringing two coats and two opera hats enclosed in a bundle. The coats were like officer's coats, dark blue done with braiding, and lined with white silk. He applied to his wife to make two cockades out of white ribbon, and told her that they were 'to deceive the flats.' He went out about half-past one with the coats, hats, and cockades, and she did not see him again till the middle of next day in Cursitor Street. He said he had slept at North Fleet, but he appeared very tired, as if he had not been in bed at all. The witness said that all through the winter M'Rae had been in desperate poverty, but after the 21st of February he was in plenty of funds, and told them he was to have 50*l.* for what he had done. p. 147.

Foxall, the landlord of the Rose Inn at Dartford, had received a letter from Sandom, from North Fleet, on the Monday morning, asking him to send immediately a chaise and pair to bring back a party to Dartford, and to have four good horses ready to go on to London with all expedition. The chaise was sent to North Fleet, and it drove furiously into his yard, containing Mr. Sandom and two other gentlemen in blue clothes, with very large cocked hats and white cockades. Sandom said they could not stop to breakfast, the gentlemen had been in an open boat all night and were very much fatigued; that he did not know whom they were, but they had news of the utmost consequence. In cross-examination the witness said he got the note about seven o'clock in the morning, and was surprised p. 152.

Trial, p. 155 at the chaise coming back in so short a time. Baldry, a postboy at the Rose, said that he drove this party over London Bridge, down Lombard Street, along Cheapside, over Blackfriars Bridge, down the New Cut, and when he was in sight of the Marsh Gate he was ordered to stop. Here the parties got out, and, having taken off the military hats they had been wearing, they put on round ones, and walked away. Mr. Sandom subsequently met him at the Bull at Kent Street end, and paid him, but the other two he did not see again.

p. 157. Mr. Francis Bailey, a member of the Stock Exchange, spoke to Holloway coming before the Committee and denying any knowledge of the transaction. Subsequently, just about the time when the bill was presented to the grand jury, he had come again, accompanied by Lyte, and confessed that he was the person who had planned that plot or participated in it, and that he had done it with a view to obtain money by a rise in the public funds. Lyte, on the same occasion, stated that he was one of the parties who had been employed by M'Rae at Holloway's suggestion, and that he, Sandom, and M'Rae were the persons who rode in the post-chaise from North Fleet to London. He denied having had any connection with Lord Cochrane, Cochrane Johnstone, or Mr. Butt. Serjeant Pell elicited in cross-examination that Holloway stated that he had come forward in order to prevent the Stock Exchange paying a large sum of money for the communication, alluding to M'Rae's offer, which would be paid, in fact, for

p. 159. nothing; and Bailey added further that the subject of M'Rae's communication was so little attended to by the Committee, that it never entered into their heads that any such sum should be paid. In answer to Mr. Park, witness said that Holloway denied having any connection with De Berenger, as well as with the Cochranes and Butt, and

p. 160. Lord Ellenborough told the jury that this evidence could of course only operate against those of the defendants who were actually there, namely, Holloway and Lyte.

p. 160. The prosecution now entered upon the Stock Exchange transactions of the defendants, and the first witness called

was Mr. Joseph Fearn, a stockbroker.[1] He said he had known Mr. Butt for several years, and had been introduced by him to Mr. Cochrane Johnstone and Lord Cochrane. In the February of this year he had been employed by all three of them to make purchases for them in the funds. On the 12th of February witness's offices were at 86 Cornhill, and Butt had an office in Sweeting's Alley. From the 12th to the 19th of February he was in the habit of seeing Butt daily both at the latter's office and at his own, and frequently in the company of Lord Cochrane and Mr. Cochrane Johnstone, as well as alone. When witness did business for Lord Cochrane he sometimes took orders from him and sometimes from Mr. Butt, and after he had acted for Lord Cochrane upon the orders of Mr. Butt, the former always recognised these orders. From the 12th to the 19th of February he made various purchases and sales of Consols and Omnium for these three defendants, Lord Cochrane's transactions, however, being only in Omnium. On the evening of the 19th Lord Cochrane had a balance of 139,000*l.* Omnium, Mr. Cochrane Johnstone a balance of 120,000*l.* Omnium and 100,000*l.* Consols, Mr. Butt 154,000*l.* Omnium and 168,000*l.* Consols. On the morning of the 21st of February witness sold the whole of these sums, both of Consols and Omnium. That same morning he removed to a new office, No. 5 Shorter's Court, close to the side door of the Stock Exchange. The office comprised three rooms: of these witness had one and a small closet; Butt had another upstairs with Cochrane Johnstone and Lord Cochrane, and the ground floor was occupied by Lance, a clerk employed by those three defendants. With regard to the taking of the office, witness said he believed that Mr. Cochrane Johnstone had taken the two rooms without intending to take more, but as he (Fearn) found his own office too far from business, he requested Cochrane Johnstone to take a room for him, and the latter accord-

[1] The summary of the evidence given on this part of the case will, I trust, be sufficient to enable the reader to follow clearly the Stock Exchange transactions of the defendants, but it is so important, not only from its substance, but from the manner in which much of it was given, that I have printed it verbatim from the shorthand report in Appendix A, *infra*, pp. 385-410.

ingly, in the week preceding the 21st, took for him the room and closet which he occupied for the first time on the 21st of February. All of these rooms were now in his (Fearn's) possession.

The three defendants had been in the habit of being at the office as early as Fearn himself, and on the morning of the 21st, at his new office in Shorter's Court, about ten or a little past, he saw Butt and Cochrane Johnstone. Asked whether he was positive whether anybody else was with him, he said 'No, I think nobody else.' Business on the Stock Exchange begins at ten; he could not say at what price Consols for time had left off on Saturday evening, but they opened about the same price on Monday morning. Near eleven o'clock good news arrived upon the Stock Exchange, and he heard either that a messenger had arrived at Dover, or that Bonaparte had been killed.

Trial, p. 165. Asked by a juryman, 'Were those gentlemen with you at the time the news arrived?' he replied, 'They were—not my Lord Cochrane.' The good news had an immediate effect upon the funds, but he had begun to sell before the

p. 165. rise took place. He rather thought that Omnium opened that morning at 29¼—at any rate, that was the first price at which he sold. His next price was 29⅜, 29½, and 30½. He sold the Consols at 70⅜, 71¼, 71⅛, 72, and 72¼. These various sales were made in different parcels. Witness came frequently to his office from the Stock Exchange to report to Butt and Cochrane Johnstone, and to receive orders; he was in the habit of receiving notes from them, and may have done so that morning. Witness remembered hearing, in the course of the morning, of a post-chaise coming through the city, but did not know whether it occasioned a still further rise in the funds. About two they began to fall, and after that time the news began to be disbelieved. Witness had an account taken from his books of the different purchases from the 12th to the 21st of February, and these accounts had been carried down to the 5th of March, and Mr. Bailey, of the Stock Exchange, had also had access to his books to take the different

balances.[1] The accounts were then delivered in, and the examination-in-chief closed.

Serjeant Best, before commencing to cross-examine, said that, though he should carry back the accounts considerably earlier, it must not be considered that by putting in accounts of an earlier date he was giving evidence. This was assented to by Gurney, and is interesting as supporting the view that the defence were still undecided as to whether they were going to call witnesses. Trial, p. 167.

Fearn's answers to Best's cross-examination amounted to the following:—The three defendants had all of them bought stock to an enormous amount, and sold very large sums long before the 8th of February. As far back as November Lord Cochrane, for instance, had sold hundreds of thousands, and there had been very large sales for all of them several days precedent to the 21st. Butt, he repeated, was the principal manager in these transactions, especially for Lord Cochrane, and the latter was not at the office on the morning of the 21st. The witness, for months previous to February 21st, had a general direction to sell the stock whenever it should so rise that a profit of 1 per cent. could be obtained, and when he went on the Stock Exchange on the morning of the 21st, he found that the stocks had got to such a pitch that he could sell consistently with his orders. Witness was then asked whether he had not sold out very large sums before either Cochrane Johnstone or Butt came near the place that morning, and, after some hesitation, said he thought he had sold considerably before he saw them. He was in the habit of 'doing twenty or thirty thousand, and reporting to them.'

So far Fearn had responded to the extremely adroit cross-examination of Serjeant Best with much more apparent alacrity than to the questions of Mr. Gurney, but when the learned serjeant began to approach the delicate subject of time bargains his answers became more guarded. The serjeant extracted the admission that it was not an unknown practice for a man who wished to gamble in the p. 169.

[1] The only books to which the Stock Exchange Committee appear to have had any access were these of Fearn's.

funds to sell stock which he has not, when he thinks they will fall, to any person who thinks they may rise. When, however, he proceeded to ask the witness whether, as broker of the three defendants, he knew of their having sold on the 21st any stock which they had not purchased before, Lord Ellenborough interposed to point out that he was placing Fearn in peril of an action for penalties,[1] and that the question must be limited to things in which the witness had not participated by way of sale. Thus cautioned, the witness replied that the three defendants had not on that day sold any stock or Omnium which they had not purchased before.

Trial, p. 170.

Fearn then gave his explanation of the taking of the office in Shorter's Court, in answer to a series of very leading questions from Serjeant Best. Mr. Butt, it appeared, had previously had an office in Sweeting's Alley, which he found inconvenient, and had accordingly removed from. Witness visited him in his new office, found the situation convenient, and said he should like a room in the same house, whereupon Butt gave up to him the room he had taken for himself, and took another in the same house. Witness said that he thought, but was not sure, that he saw Lord Cochrane on Saturday, February the 19th, and as a last answer said that, while the three defendants were very large speculators, they did not always speculate the same way, but, on the contrary, it had several times happened that when one bought the other sold out.

p. 172.

In re-examination Gurney first ascertained that on the 21st, at any rate, they all acted together and all sold. Witness only knew by report that Lord Cochrane was

[1] Under Barnard's Act 'to prevent the infamous practice of Stock-Jobbing,' 7 Geo. II. c. 8 (A.D. 1734). Section 8 of the Act is to this effect: 'All contracts and agreements whatsoever which shall be made or entered into for the buying, selling, or transferring of any public securities whereof the persons contracting, or on whose behalf the contract is made to sell a transfer, shall not, at the time of making such contract, be actually possessed, shall be null and void, *and all persons contracting to sell any stocks or public securities, whereof they shall not be actually possessed, shall forfeit the sum of 500l., to be recovered by action of debt or by information, one half to his Majesty, the other half to the informer.*' The Act was repealed 23 and 24 Vict. c. 28.

residing in Green Street, and had only learnt it since the publication of the printed paper of the Stock Exchange. A juryman then interposed, and wanted to know with regard to defendants' sales of stock, whether they were sales of what they had bought and paid for, or only such as they had contracted for the purchase of. Was it actually bought and transferred to them, or was it not a purchase for time altogether? Were they not all time bargains, both the Omnium and the stock? 'This,' said Fearn, 'is one of those questions I cannot answer.' Trial, p 173.

Robert Hichens was then called. He had known Cochrane Johnstone for some years past, but had not done business for him until the present year. From the 8th to the 19th of February he had made various purchases for him, and on Saturday there was a balance of 250,000*l.* of Omnium. On that day he received an order from him to sell 50,000*l.* at 1 per cent. profit. This he effected on Monday morning, selling at 29, and as he was coming out of the Stock Exchange, about 10.45, he met Cochrane Johnstone, and told him what he had done. The latter directed him to sell the rest, which he did in the course of the day at 29, 29⅛, 29¼, 30¾, and 30⅞. p. 174.

Cross-examined by Mr. Topping as to Cochrane Johnstone's balances, he said that on the 15th they amounted to 465,000*l.*, which was reduced to 265,000*l.* by a sale of 200,000*l.* on the 16th. On the 17th he bought 50,000*l.* and sold 115,000*l.*, reducing the balance to 200,000*l.*, and on Saturday, the 19th, he bought 50,000*l.* more.

William Smallbone, another stockbroker, had made purchases of 40,000*l.* Omnium for Cochrane Johnstone and 40,000*l.* Omnium for Butt. Cochrane Johnstone's had been bought in two parcels of 20,000*l.* each, one on the 12th and the other on the 14th of February. All of this Omnium was sold out on the 21st by the respective orders of the two proprietors. Cochrane Johnstone gave his order as to part on the Saturday, as to part on the Monday. The selling-out prices were 28⅛, 29¼, 29, and 29½. p. 176.

The cross-examination of Smallbone was conducted by

Scarlett, his first intervention in the case. With regard to the purchase of 40,000*l.* for Cochrane Johnstone, the witness said that though the order came from him, it was not upon his own account. The order given for the sale on Saturday was to sell any of it that day at a quarter profit if the opportunity occurred. As it did not occur he kept the stock, and had disposed of 20,000*l.* by 10.30 on the Monday when he first saw Cochrane Johnstone, who ordered him to sell the remainder immediately, which he did about 11 o'clock; the rumours of good news were current soon after the market opened between 10 and 11. Mr. Butt's 40,000*l.* had been bought in three different parcels on the 12th, 14th, and 18th of February, and he had given him orders to sell whenever he saw an opportunity of selling at a quarter profit, or three-eighths, as the circumstances might allow. Witness had known Mr. Butt for about six months before this, and it was at his office in Sweeting's Alley that he first saw Mr. Cochrane Johnstone. In answer to further questions witness said that if any person had known that this news was false and had been disposed to be a Bear, he might have made his fortune by selling for account on that day, but he received no directions from these gentlemen to sell more than they had bought.

Trial, p. 180.

p. 180. De Berenger's counsel then asked whether the large quantities of Omnium bought on account had been paid for. The witness appealed to the judge, who told him he need not answer any question that implicated him in a crime, and he accordingly declined to answer.

p. 181. Malcolm Richardson was the next witness. He was a bookseller, and sometimes acted as a stockbroker, but was not a member of the Stock Exchange. He said that on the morning of Saturday, February the 19th, Butt applied to him to purchase 150,000*l.* Omnium. He answered that he hesitated to execute a commission to that extent, and he only purchased 20,000*l.* He had received instructions to sell it again if he could get a quarter per cent. profit, and in a short time he succeeded in getting three-eighths profit, and sold it without waiting for instructions. That same

day Butt instructed him to purchase 30,000*l.* Omnium. He did so, and sold it all on the Monday morning at 28¼ at a profit of three-fourths per cent. in pursuance of instructions received on the Saturday.

In answer to Brougham, Richardson said that he had formerly been a partner with Mr. Fearn, senior, and that he had previously, but not on this occasion, applied to Mr. Butt to give him some of his business. De Berenger's counsel asked this witness also whether any of the Omnium bought for Mr. Butt was paid for, but he declined to answer. Trial, p. 183.

Mr. Francis Bailey, of the Stock Exchange, then put in a general statement [1] of the several accounts of Mr. Cochrane Johnstone, Lord Cochrane, and Mr. Butt, containing the daily purchases, the daily sales, and the daily balances in their various transactions with Fearn, Hichens, Smallbone, and Richardson. The three former had furnished him with the information themselves, Richardson had rendered no written account, but Bailey had taken it down from his mouth in Court. Gurney took him briefly through it. p. 183.

On the 19th of February Mr. Cochrane Johnstone's total balance of Omnium was 420,000*l.*, and of Consols 100,000*l.*; Lord Cochrane had a balance of 139,000*l.* Omnium and no Consols; and Butt had a balance of 200,000*l.* Omnium and 178,000*l.* Consols. In the proceedings on the Monday, Butt sold 24,000*l.* too much of his Omnium and 10,000*l.* too little of his Consols. The gross amount of their balances on the Saturday was 759,000*l.* Omnium and 278,000*l.* Consols, and, as every thousand pounds of Omnium consisted of 1,100*l.* reduced and 670*l.* Consols, this whole balance, if reduced to Consols, would have amounted to 1,611,480*l.* Three per Cents., and on that amount the fraction of a single eighth per cent. would be 2,014*l.* 5*s.* 9*d.* From these accounts Bailey had calculated the profits made by the sales on the 21st. p. 185.

[1] This will be found in Appendix A, p. 401. It should be noted that apparently it was made, not from the books themselves, but from *statements* furnished by the witnesses. Compare Trial, pp. 166 and 184, and *supra*, pp. 100–101.

They amounted to 10,450*l.*, in the proportion of 2,470*l.* for Lord Cochrane, 4,931*l.* 5*s.* for Cochrane Johnstone, and 3,048*l.* 15*s.* for Butt. Witness was of opinion, from the state of the market on the morning of the 21st, that if no news had arrived, such as raised the funds on that day, no persons could have sold this large quantity of Omnium and Consols without very much depressing the market. He also said that the funds, on the second rise which took place upon the chaise driving through the city, went higher than they had gone on the report of the arrival of the messenger.

Trial, p. 187. Bailey, from the fact of his not being under the same restraint or subject to the same penalties as the brokers, was pressed by Park as to whether these were real or fictitious transactions, but he would not say more than that from the magnitude of the accounts he should suppose they must have been time bargains, but that there was nothing upon the face of the accounts to lead to any such conclusion.

p. 188. James Wetenall was called to give the prices on the Stock Exchange, which it was his duty to take daily and furnish to the Bank. He said that Omnium left off at 26¾ on Saturday, February the 19th. This was the money price, the time price being generally about 1 per cent. higher. On the Monday morning Omnium began at 26½ for money (he did not take the time price). After the news came it eventually reached as high as 30¼; it then fell by degrees to 30, and from that to 28, but left off 1½ per cent. higher than it opened in the morning.

Cross-examined by Serjeant Pell, witness said that the stocks rose at first, then fell, and then rose again, and that the second rise was attributable to the arrival of the post-chaise. In answer to Mr. Park, he said that stock had been sold at a rise before the news arrived, but (in answer to Gurney) there had been some reports of a messenger having arrived before the market opened.

p. 192. Charles Addis gave evidence relative to the taking of the house in Shorter's Court. On the 15th of February Mr. Cochrane Johnstone applied to him for an office in

No. 5 Shorter's Court, the letting of which was under his management. On that day he took one room in the house. He called again on the 16th and engaged another room, and on the 17th he took a third room, and subsequently left a letter for the witness, which was put in and read. The salient point in it was the following:—'I called again upon you to know if you have powers to sell the house, part of which I have taken, as I find there are several persons in the house at present, which is rather awkward, and makes it too public.' Cross-examined by Serjeant Best, witness said that the first room was taken for Butt expressly, and the second room also. It was on the third occasion that Cochrane Johnstone said he wanted a room for Fearn.

James Pilliner, Holloway's broker, swore that the latter was possessed of 20,000*l.* Omnium and 20,000*l.* Consols before business began on Monday, February 21; that he instructed him about the middle of the day on Monday to sell all his stock, and in consequence of this he sold for him all the Omnium and 14,000*l.* of the Consols. Trial, p. 194.

James Steers, stockbroker to the Accountant-General of the Court of Chancery, said that in that capacity he purchased Consols on the 21st of February to the amount of 15,957*l.* 10*s.* 8*d.* at 71⅛ per cent. These purchases were made shortly after eleven, when the news had considerably raised the stocks. In answer to a juryman as to what price he could have bought at on the Saturday, he replied that his purchases on that day, amounting to over 6,000*l.*, were made at 70 per cent. p. 196.

This part of the case was now closed, and the prosecution came to deal with Lord Cochrane's affidavit. Gurney said that he had called for it, that his learned friends admitted the notice to produce, but had not produced it. Accordingly he called evidence to prove the publication. p. 197.

John Wright said he was in constant communication with Lord Cochrane during the months of February and March. In the course of that time Lord Cochrane delivered his affidavit to him for the purpose of getting it printed and inserted in the newspapers, which witness did. He denied, p. 197.

however, any knowledge of the Smiths' affidavits. In answer to Serjeant Best, he deposed that Lord Cochrane, at the time when he was giving directions for printing, read over the affidavit, and said, 'I once saw Captain De Berenger at Mr. Basil Cochrane's at dinner. I have no reason to think that Captain De Berenger is capable of so base a transaction, but if he is, I have here given the gentlemen of the Stock Exchange the best clue to find him out.' Re-examined with a view to fixing the date of the affidavit being given, witness said it was on the afternoon of the day before it appeared in the 'Morning Chronicle.' He also said that Lord Cochrane had, at his request, given him a copy of a pamphlet, which, though it is not described, was obviously Butt's pamphlet, the 'Calumnious Aspersions.'[1]

[1] As this illustrates a not unimportant part of the case, I subjoin the answers in cross-examination and re-examination from the shorthand report, p. 199:—

Cross-examined by Mr. Serjeant Best.

Q. You have said that he brought this paper to you, giving you directions to have it printed?—*A.* He wished it to be inserted in the newspapers.

Q. Tell us all that he said to you at the time; did he not at the time when he was giving you directions to print it say that if De Berenger was the man he had given the Stock Exchange the clue to it?—*A.* After reading the affidavit, his lordship said, 'I once saw Captain De Berenger at dinner.'

Lord Ellenborough: Was this at the time?—*A.* Yes; he said, 'I once saw Captain De Berenger at Mr. Basil Cochrane's. I have no reason to think that Captain De Berenger is capable of so base a transaction, but if he is, I have given the gentlemen of the Stock Exchange the best clue to find him out.'

Lord Ellenborough: Did he say what sort of clue he had given?—*A.* The clue as to De Berenger.

Mr. Gurney: By his affidavit?—*A.* Yes, that by that he had given them the best clue.

Re-examined by Mr. Adolphus.

Q. When was it this affidavit was given to you?—*A.* I cannot state the day.

Q. Was it so late as March?—*A.* No, it must be about the 27th or 28th of February, I think, but the newspaper will prove the date; it might be the 1st or 2nd of March; I cannot speak to that.

Q. Was it not after the 11th of March?—*A.* I cannot state, indeed.

Q. It was given to you the day before it appeared in the *Morning Chronicle*?—*A.* It was the day before, about three o'clock.

Mr. Gurney: Look at that (*showing a pamphlet to the witness*). Have

The proof of publication was not at that moment fully made out, but in answer to an intimation of Lord Ellenborough's—'I leave it to your judgment whether your resistance does you more good than the admission'— Serjeant Best said he certainly would not resist the admission of the affidavit; they had not the original, or they would have delivered it at once. The affidavit was accordingly read; it has already been given in full at p. 35. Trial, p. 201.

A certain Mr. Le Marchant was the next witness. He had known De Berenger for about eighteen months, and the latter was frequently in the habit of calling upon him. He stated that one evening, about the 14th of February, De Berenger mentioned to him in conversation 'that he was about to go to America under the command of Lord Cochrane, and that his pecuniary embarrassments were all settled. He had rendered services to Lord Cochrane and Mr. Cochrane Johnstone, whereby his lordship could realise a large sum of money by means of the funds. His lordship was his friend, and had told him a few days before that he had kept unknown to him till that period a private purse for him.' De Berenger also had 'frequently mentioned particular intimacy of dining, breakfasting, and supping with his lordship,' and he stated that he was to have a percentage for the ideas he had given to Lord Cochrane and Mr. Cochrane Johnstone, enabling them to make a profit in the stocks. Before proceeding to cross-examine Serjeant Best said, 'I am aware that your lordship will not consider this as evidence against Lord Cochrane or Mr. Cochrane Johnstone,' to which Lord Ellenborough assented. p. 205. p. 207.

This witness was a very weak part of the case for the

you received one of those pamphlets either from Mr. Cochrane Johnstone, Lord Cochrane, or Mr. Butt?—*A.* Lord Cochrane gave me one of those at my own request, hearing it was published.

Q. Look at that which purports to be an affidavit of Lord Cochrane.

Mr. Serjeant Best: Is that the identical book Lord Cochrane gave you?—*A.* No.

Mr. Gurney: Read the affidavit, and tell me whether you know that to be verbally and precisely the same?

Mr. Serjeant Best: I submit to your lordship that will not do.

Mr. Gurney: Where is your copy of the pamphlet?—*A.* It is at home.

Mr. Gurney: Will your lordship allow him to go home and fetch it?

Lord Ellenborough: Certainly.

prosecution. What Lord Ellenborough thought of him appears sufficiently in his summing-up.[1] He was justly subjected to a severe cross-examination by Serjeant Best, the object of which was to prove that his evidence was only given after Lord Cochrane had refused him a loan of money. The proof of this was contained in letters written by him to Lord Cochrane and now in the possession of the latter's counsel. Lord Ellenborough ruled that questions relative to this transaction could not be put without having the letters read. Serjeant Best offered to have them read at once, but Lord Ellenborough refused on the ground that it would disturb the order of the proceedings. He ruled that the letters must be read as part of the defendant's case, and then the witness might be recalled and asked any questions on them.

This discussion seems to me to mark the last struggle on the part of the defence to avoid calling witnesses, and I accordingly print it in full :—

Trial, p. 210, *et seq.*

Q. (By *Serjeant Best*) : Now I ask you another thing—Did you ever disclose this conversation with Mr. De Berenger till after Lord Cochrane refused you a loan ?

Lord Ellenborough : If any application you made for a loan was in writing, you are not bound to answer that question.

Mr. Serjeant Best : My question was as to the time of the disclosure to the Stock Exchange. I will certainly read his letters ; this does not touch me, but my learned friends of counsel for De Berenger had not seen these letters. My question is, whether you ever disclosed the matter you have stated to-day against De Berenger till after you were refused a loan by Lord Cochrane ?

Lord Ellenborough : But if the proposition for loan was in writing, the letter must explain itself.

p. 508, *infra*, p. 542.

[1] 'He does himself no credit, and he is a person, on the statement of the letters which have been read, whom Government might do very well in letting ride at anchor here without going abroad.' The Government took the hint and Le Marchant lost his appointment as Registrar of a Colonial Court. *Hansard*, vol. xxviii. p. 121.

I think it possible that, owing to the fact of Lord Cochrane having already published in the *Morning Chronicle* the correspondence that had taken place between himself and Le Marchant, the prosecution felt bound to call him, or his absence from the box would have been commented on.

Mr. Scarlett: If we are not allowed to examine this witness as to his motives and his conduct as to these letters, I do not see how these letters could ever be made evidence.

Lord Ellenborough: You cannot examine him as to his motives without producing the letters—that would be extracting the most unfair testimony in the world. I know nothing about the man, I never saw his face before to-day; but he, as a witness, has a right to the common protection of the law of the land, and not to have garbled questions put to him.

Mr. Scarlett: We do mean to read the letters.

Lord Ellenborough: And then you may call him back to ask him any questions upon them; but I would not have him answer without the letters being read.

Mr. Brougham: My learned friend merely referred to the letters as a date, not to the substance of the letters.

Lord Ellenborough: But he has said that he never had any communication with Lord Cochrane but by letter, therefore the request for a loan, if any one was made, must have been by writing; and if he is to be questioned about that request in writing, he ought to have the terms of that request in writing read before the jury, so as to give a pointed answer to it.

Mr. Brougham: With great submission, my learned friend did not ask as to the contents of the correspondence, but in point of date and time merely. He put this question, Was your information given to the Stock Exchange previously or subsequently to that correspondence, whatever the contents of that correspondence were?

Lord Ellenborough: I never heard that question put till this moment. Previously to some supposed correspondence, without stating the nature of that correspondence, was the information given by you to the Stock Exchange?—*A.* No, it was given by Lord Cochrane in his publication of the correspondence in the 'Morning Chronicle.'

Lord Ellenborough: We cannot get on without the letters.

Mr. Serjeant Best: I have no objection to the letters being read now.

Lord Ellenborough: That would disturb the order of the proceedings.

Cross-examined by Richardson, the witness said that De Berenger had mentioned to him that he had hopes of being employed in America under Lord Cochrane.

Trial, p. 211. The Hon. Alexander Murray had been in the rules of the King's Bench at the same time as De Berenger, and a considerable intimacy had subsisted between them. One Sunday, early in February, De Berenger dropped in to see him, and in course of conversation said that there was a transaction going on; that he had a plan in view with Mr. Cochrane Johnstone and Lord Cochrane; that, provided it succeeded, it would put many thousand pounds in the pocket of Mr. Cochrane Johnstone and Lord Cochrane. Witness pressed De Berenger as to the nature of the plan, and asked him if it was the one with regard to a Ranelagh which it was proposed to build in Alsop's Buildings on Mr. Cochrane Johnstone's land. He said, 'No, it is not; it is a far better plan.' Witness also said that he knew there p. 215. was a very particular intimacy between De Berenger and Cochrane Johnstone, but he did not understand it was with Lord Cochrane at all; he understood that the latter was a more recent acquaintance, and he had never heard him state anything with regard to his visits to Lord Cochrane. Mr. Murray was cross-examined by Park as to the draughting work and plans which he had drawn for Mr. Cochrane Johnstone, as explaining the intimacy and frequent association between the two, which occasioned Lord Ellenborough to say:—

If you see any tendency to the advantage of your client, I will not interrupt you, but at present this seems to have no bearing.

Mr. Park: I assure your lordship, and I know I shall have credit for believing what I state, I would not at this hour of the night pursue it if it was not important, but I feel it necessary when it is stated that there has been a wonderful intimacy, from which conspiracy is sought to be inferred.

Lord Ellenborough: I will not ask you to go into your reasons, if you only say you think it material.

The witness gave very full particulars on this point, and paid high testimony to De Berenger's character as a p. 217. man of honour and integrity: 'I saw nothing but the most perfect gentleman during the time I lodged under the same roof.'

William Carling, a servant of the Honourable Basil Cochrane's, Lord Cochrane's uncle, said that Baron De Berenger had come twice to dine as a visitor at his master's house. On one of these occasions both Mr. Cochrane Johnstone and Lord Cochrane were present; on the other only Mr. Cochrane Johnstone. Both Mr. Cochrane Johnstone and Lord Cochrane appeared to be acquainted with De Berenger. In cross-examination he said that the first of these dinners was in January, the next in February; they were dinner parties consisting of an indiscriminate mixture of ladies and gentlemen, and his information was merely that of a servant attending at table.

Barnard Broochooft, the clerk to the marshal of the King's Bench, was called to give formal evidence that De Berenger had been a prisoner in the King's Bench from the end of 1812. He was cross-examined by Park as to whether he had not seen Mr. De Berenger near the King's Bench very early on the morning of the 21st of February, but he said he could not recollect having seen De Berenger for a great length of time previous to that. The security enabling him to live in the rules was about 400*l.*, and that might be taken as a sum commensurate with the debt and costs. Trial, p. 220.

Mr. Joseph Wood was the next witness. He was the messenger of the Alien Office who arrested De Berenger at Leith on the 8th of April. The Secretary of State's warrant had been in his possession since the 17th of March. On arresting De Berenger he found amongst his things a portable writing-desk containing papers, bank notes, and money. There were two packets of bank notes, a pocket-book containing one fifty-pound and four five-pound notes, two napoleons, some guineas and half guineas, and also a memorandum-book, a paper of memoranda, and a road book. Gurney then wanted to read the first article in the memorandum-book, but Park strenuously protested against anything being read until the handwriting was proved to be De Berenger's. Lord Ellenborough ruled that a paper found under the lock and key of a party was *primâ facie* readable against him; if the p. 221. p. 224.

prosecution did not go further, he said the reading this, as found in his possession, was doing little. Gurney hereupon handed the memorandum to Mr. Lavie, who swore that he had no doubt that it was in De Berenger's writing. Serjeant Best interposed to the effect that this could not be evidence against the Cochranes,[1] and Lord Ellenborough assented, saying, 'No, if it was transmitted by him in writing to the others, it would be evidence against them, but it purported to be only a memorandum of his own.' The extract was then read: 'To C. I. by March 1st, 1814, 350*l.*—4*l.* to 5,000—assign one share of patent and 1,000*l.* worth shares of Jn. De Beaufain at Messrs. H. to their care.—Believe from my informant 18,000*l.* instead of 4,800*l.*—Suspicious that Mr. B. does not account correctly to him as well as to me.—Determined not to be duped. No restrictions as to secrecy—requesting early answer.'

Trial, p. 224.

Mr. Park said, 'I never heard a word of this.' 'Very likely not,' replied Gurney.[2]

Wood was cross-examined at some length; first as to the custody of the desk and its contents. It was proved that until it went before the grand jury it had never left his possession, except when he was absent for a short time in Holland, when it was in the possession of Mr. Musgrave, a clerk in the office, and the only other person who had access to it was Mr. Tahourdin, De Berenger's attorney. He was then closely questioned as to what took place at the Parliament Street Coffee-House, whither he

[1] It was one of Lord Cochrane's complaints that the absence of any allusion to him in this memorandum made it not only no evidence against him, but very strong evidence in his favour; and that Best, in consequence of representing him jointly with Cochrane Johnstone and Butt, was unable to make use of this argument. Without having seen Counsel's brief it is impossible to say how far he was justified.

Letter to Lord Ellenborough, pp. 117–118.

[2] Yet this memorandum had been fully opened to the jury by Gurney (p. 81, *supra*). It seems doubtful to me whether Park meant that he had never heard of it till that morning, or that he was not in Court at the beginning of the case. With such an array of Counsel, they were probably able to relieve one another, and this should be taken into account in considering whether the leaders were over-fatigued when they came to address the jury.

conveyed De Berenger on the day of their arrival in London. There Mr. Wakefield—a member of the sub-Committee of the Stock Exchange—and Mr. Lavie had visited them, and remained for ten minutes or a quarter of an hour in conversation with De Berenger. It was put to the witness that these gentlemen had stated to De Berenger that they did not wish to press him if he would furnish information against Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt. Wood persisted that he did not recollect anything of the kind, that he did not hear these names mentioned; he admitted that Mr. Wakefield put some questions to De Berenger relative to the Stock Exchange business, but what the exact conversation was, which he did not listen to, he could not say. Lord Ellenborough suggested that they had better call Mr. Wakefield, but Park said he could not, as he was one of the prosecutors. Further questions were put with the object of showing that De Berenger said he was unwell and exhausted, and unwilling to see Wakefield and Lavie at all.

Trial, p. 226.

The prosecution had now reached the last part of the case, the tracing of the notes found on De Berenger.

First of all Fearn was recalled, and shown a cheque dated the 10th of February, 1814. He swore that he gave it to Butt on the day of its date. Evans, the clerk who was alleged to have paid the cheque, was called, but did not appear, and the prosecution had to pass on to the next.[1]

p. 229.

Smallbone was recalled and shown a cheque on Jones, Loyd & Co., for 470*l.* 19*s.* 4*d.*, payable to No. 119 or bearer. He said he drew it on the 19th of February for Lord Cochrane, and gave it to him personally in payment

pp. 230–and 509.

[1] This cheque was drawn by Fearn on Bond & Co. for 56*l.* 5*s.*, payable to Butt; and Gurney, in his opening speech, had said that it was paid partly in a fifty-pound note, which was found in the possession of De Berenger when he was taken at Leith. It will be seen that a further effort to bring home this cheque was foiled by the continued absence of Evans, who had been expressly desired to be in attendance, and was called on his subpœna. His failure to appear was a highly suspicious circumstance.

pp. 229, 253 p. 51, *supra*, p. 82. Trial, p. 253, *infra*, p. 122.

on the stock account. Cross-examined by Best, he said he thought Mr. Butt was in the office at the time, but he felt satisfied that he gave it to Lord Cochrane and not to Butt, and he could not say that he saw Lord Cochrane hand it over to Butt. Asked whether Butt did not frequently act for Lord Cochrane, he said 'Not with me'; and in answer to a juryman, he said that he charged Lord
Trial, p. 281. Cochrane with it in account. The cheque was then shown to William Wharmby, a clerk of Jones, Loyd & Co., who remembered paying it on the 19th of February, and was beginning to state the details of payment, but not having the books with him was sent off by Gurney to fetch them.

p. 282. Whilst awaiting the arrival of the books, Gurney filled up the time by putting in and proving Cochrane Johnstone's letters to the Stock Exchange of the 12th and 18th of April, containing the offer of M'Rae to reveal the plot for 10,000*l.*, and the promised subscriptions of 1,000*l.* each by the three defendants in aid of this sum. The letters have already been given in extenso at p. 50. He also put in the letter of March 14th, given on p. 45, written by Cochrane Johnstone to the Stock Exchange. It will be seen on reference that it contained the following passage: 'I pledge myself to prove that the whole profits' (on the sale of stock on February 21st) 'are as follows, viz.:—

Lord Cochrane	£1,700
Mr. Butt	1,300
Mr. Cochrane Johnstone . . .	3,500.'

p. 284. Mr. Gurney said: 'I apply that to the memorandum I before read, by which it appears that he states his own gains and Mr. Butt's to be 4,800*l.*, subtracting Lord Cochrane's; the whole is 6,500*l.*'[1]

p. 285. Wharmby had now returned, and was again shown the cheque of February the 19th for 470*l.* 19*s.* 4*d.* He had paid it on February the 19th in bank notes; amongst them were—

[1] I think Mr. Gurney's meaning is clear, but the grammar is faulty.

No.	684 for	£200
No.	18,468 for	100
No.	16,601 for	100
No.	7,875 for	50

He paid the notes to the bearer of the cheque, but could not say who it was.

Thomas Parker, Lord Cochrane's coal merchant, was shown the note No. 7,875, and identified it as having been paid to him by Lord Cochrane in the beginning of March or the end of February. Benjamin Lance was recalled, and said that on the 24th of February Mr. Butt sent him to the Bank of England to exchange two large bank notes for smaller notes. He was shown the 100*l.* notes (Nos. 18,468 and 16,601) produced by Wharmby, and said they were the two notes so received from Butt. In exchange he received two hundred 1*l.* notes, which he gave to Butt. Trial, p. 235. p. 236.

Lance was cross-examined by Scarlett, with the object of showing that previously to the cashing of this cheque and changing of these notes there had been a loan from Butt to Lord Cochrane, and that these notes, 18,468 and 16,601, had been given to Butt by his lordship in repayment of it. Lord Cochrane afterwards laid so much stress on this alleged loan, that for purposes of reference I print the whole of the cross-examination :—

Q. Have you any connection with Mr. Smallbone ?—*A.* Yes, I am with Mr. Smallbone. p. 237, *et seq.*

Q. Do you remember at any time, on the 15th of February, Mr. Butt lending Lord Cochrane 200*l.*, in order to make up a sum that he had to pay ?—*A.* Yes.

Q. On the 15th of February ?—*A.* Yes, it might be on the 15th of February.

Q. Do you remember going with that cheque [*showing it to the witness*], which was afterwards given by Mr. Smallbone, to get the money ?—*A.* Yes, that cheque for 470*l.* 19*s.* 4*d.*

Q. That bears date the 19th of February ?—*A.* Yes.

Q. You were the person who took that to the banker's, to get the money for it ?—*A.* Exactly so.

Q. You say you know Mr. Butt did lend Lord Cochrane 200*l.* ?—*A.* So I understood ; I did not see him lend it.

Mr. Gurney : He does not know that it was lent.

Mr. Scarlett: How do you know that it was lent?—*A.* Only by Mr. Butt saying so.

Lord Ellenborough: At what time?—*A.* The 15th of February.

Lord Ellenborough: This cheque is dated the 19th?

Mr. Scarlett: You received in payment for that cheque two notes of 100*l.* each?—*A.* Yes, I did.

Q. What did you do with those two notes of 100*l.* each?—*A.* I gave them to Lord Cochrane.

Q. That was on the 19th of February?—*A.* Yes, it was.

Q. Were you present when Lord Cochrane paid those notes back to Mr. Butt?—*A.* I was not.

Q. Though you were not present when those notes were given by him to Mr. Butt, do you know that those notes were in Mr. Butt's hands afterwards?—*A.* I know of receiving them from him.

Q. Though you paid them to Lord Cochrane upon the 19th, did you not afterwards receive them from Mr. Butt?—*A.* I received the two 100*l.* notes I have now looked at from Mr. Butt.

Q. It was by Mr. Butt's desire you changed them for small notes at the bank?—*A.* Yes.

Q. That, you say, was the 24th of February?—*A.* Yes.

Q. For Mr. Butt?—*A.* Yes.

Q. Was Lord Cochrane in the city at that time?—*A.* Not that I know of.

Q. Do you know on the 15th of February of any loan made by Mr. Smallbone to Lord Cochrane?—*A.* Yes, I do.

Mr. Gurney: Do you know that of your own knowledge, or how do you know that?—*A.* I know that of my own knowledge.

Mr. Scarlett: I believe you know that my lord had a certain sum to make up to pay what he owed at that time?—*A.* He had.

Q. How much was that amount?—*A.* I am not prepared to tell you the exact amount.

Q. Was it between 600*l.* and 700*l.*?—*A.* More than that.

Q. Do not you know that he was without the money in the city, to make it up at that time?—*A.* He was.

Q. How much did he borrow of Mr. Smallbone?—*A.* I cannot say exactly.

Q. Was it 450*l.*?—*A.* 450*l.* I think was advanced by me as clerk to Mr. Smallbone.

Lord Ellenborough: In all 450*l.*?—*A.* In all 450*l.*

Q. 250*l.* in these bank notes?—*A.* No, 450*l.* besides these bank notes.

Lord Ellenborough: The 450*l.* is to be added to these bank notes.

Mr. Scarlett: The witness was not present when Mr. Butt lent the 200*l.* I was about to show, that besides the 450*l.* that Mr. Smallbone lent, Lord Cochrane wanted 200*l.* more, and that he went out to get it.

Lord Ellenborough: Did you see the 200*l.* lent to Lord Cochrane?—*A.* No.

Q. How do you know it was lent?—*A.* Because I was told so by Lord Cochrane.

Lord Ellenborough: Then it comes to nothing?

Mr. Scarlett: He knows the fact that he wanted the 200*l.* You advanced 450*l.* yourself?—*A.* Yes, I did.

Lord Ellenborough: In gold or bank notes?—*A.* In bank notes.

Q. In what description of bank notes?—*A.* The money was lent in fact by Mr. Smallbone, and he made up the difference; it is not usual to pay in bank notes, and we made it up in cheques; his lordship had left his money at the west end of the town.

Mr. Scarlett: You advanced his lordship 450*l.*?—*A.* Yes.

Q. Was that all that he wanted, or did he want more?—*A.* No, he wanted 200*l.* more.

Lord Ellenborough: This advance must all be in paper?

Mr. Scarlett: Yes, my lord; it is not material to my purpose to show how Mr. Butt made this advance to him.

Lord Ellenborough: If it was a loan, and you rely upon it as such, you must show in what it was?—*A.* The 450*l.* was in a cheque.

Lord Ellenborough: Then that cheque must be shown.

Mr. Scarlett: Mr. Butt was not present, was he?—*A.* Not that I know of.

Q. At what time Lord Cochrane gave these two 100*l.* notes to Mr. Butt you do not know, do you?—*A.* No.

Q. But it was not by Lord Cochrane's desire you took them to the bank?—*A.* No, by Mr. Butt's.

John Bilson, a Bank of England clerk, was then called, and he was shown the two 100*l.* notes. They were entered in the book for payment on the 24th of February, and

Trial, p. 240.

were paid in one-pound notes. The book recorded the number of these notes. Witness was handed one of the parcels of notes found in De Berenger's trunk at Leith; it comprised forty-nine one-pound notes, all of which were part of the 200 given by him in exchange for the two 100*l.* notes. A juryman asked what were the numbers of the two 100*l.* notes, to which he replied—

'16,601 and 18,468.'

Trial, p. 242. Thomas Christmas had been Fearn's clerk in February, and recollected being sent by him[1] on the 24th of that month to change a note for 200*l.* at Messrs. Bond and Pattesall's. He was then shown the note No. 634, and recognised it as the note so given him. In exchange he received two notes of 100*l.* each. These notes he took to the Bank of England, and received in exchange again 200 notes of 1*l.* each, which he took back and gave to Mr. Fearn. He put Fearn's name on the back of them, and their numbers were

19,482 and 19,592.

Neither Butt nor Cochrane Johnstone was present when he gave them, and he did not see what Fearn did with them.

p. 244. Fearn was again recalled, and said that on the 24th of February he received from Christmas 200 1*l.* notes, which he gave to Butt, and he saw Butt give them to p. 245. Cochrane Johnstone. In answer to Brougham's cross-examination, he said he did not see Butt give to Cochrane Johnstone the other 200 1*l.* notes brought from the bank by *Lance*.

p. 244. The bank clerks, Bilson and Northover, said that on the 24th of February they paid 'to Fearn' 200 1*l.* notes for two notes of 100*l.* each, and in answer to a juryman said the number of these two notes were

19,482 and 19,592.

supra, p. 85. [1] It will be seen by reference to Gurney's opening that he made a slip and represented the 200*l.* note as being changed by order of Mr. Butt. He was for the moment confusing Christmas with Lance; the importance of this will be seen when we come to examine Serjeant Best's speech.

Sixty-seven 1*l.* notes found in De Berenger's writing-desk at the time of his arrest were then given to them, and on comparing them with the entry in their books they said they all formed part of those given in exchange for these two 100*l.* notes.

The whole of this transaction is so complicated that at the risk of being tedious I venture to recapitulate it. We start with a cheque paid to Lord Cochrane by Smallbone, on the 19th February, 1814, for 470*l.* 19*s.* 4*d.* Of the proceeds 20*l.* 19*s.* 4*d.* is not traced; a 50*l.* note, No. 7,375, is paid by Lord Cochrane to his coal merchant. The remaining 400*l.* are represented by a 200*l.* note, No. 684, and two notes of 100*l.* each—18,468 and 16,601.

No. 684 passes from Lord Cochrane to Fearn, who sends Christmas with it to Bond's Bank, where it is changed into two notes of 100*l.* each—19,482 and 19,592. These notes are again changed for one-pound notes, this time at the Bank of England by Christmas, who gives them to Fearn, who gives them to Butt, who gives them to Cochrane Johnstone. Sixty-seven of these one-pound notes were found in De Berenger's writing-desk.

The history of Nos. 18,468 and 16,601 is simpler. They pass from Lord Cochrane to Mr. Butt, who sends Lance with them to the Bank of England, where they are changed for one-pound notes and handed back by Lance to Butt. Of these forty-seven were traced to De Berenger.

That the trained business minds of the special jurors were alive to the importance of these transactions, and to the necessity of keeping the two sets of notes distinct, is clear from the pains they took in themselves asking for the numbers of the notes at the various stages of these puzzling permutations.

Wood, the Alien Office messenger, produced two watches found in De Berenger's desk at Leith, and Bramley, a watchmaker from Hull, was called. He had not sold either of those watches, but he *had* sold a watch on the 4th of March to a man, whom he identified as De Berenger, for 30*l.* 19*s.* 6*d.* The payment was made in 1*l.* notes of the Bank of England, on which witness put his initial and the date. A bank clerk produced seven notes which witness identified as part of those he had

received. Bilson and Northover then compared these with their books, and said they were part of the property paid 'to Fearn' on the 24th of February.

Lance was recalled again, and shown a cheque on Prescott & Co. for 98*l.* 2*s.* 6*d.*, which he said he had given to Butt on the 26th of February; and Isherwood, a clerk of Prescott & Co., said he paid it on the 26th of February, and gave in exchange for it *inter alia* a 50*l.* note—No. 13,396, and a 40*l.* note, No. 6,268. Both notes were shown to and identified by him.

Trial, p. 247.

The prosecution attempted to trace the 50*l.* note to De Berenger by proving that it had been changed by his servant, William Smith, and so to connect it with the entry in De Berenger's memorandum-book, 'W. S. 50*l.*' Both Serjeant Best and Mr. Park protested against this unless Gurney called Smith, which he said he had no intention of doing: 'I shall leave that to my learned friends.' Lord Ellenborough supported their contention, and held that it was no evidence: 'It does not get the length of William Smith; but even if it were to be taken to refer to William Smith, it does not connect it with this bank note or any other means of payment. I cannot translate "W. S." into "William Smith, my servant," and "50*l.*" into "this 50*l.* bank note."'

p. 250.

The 40*l.* note, however, was identified by a Mr. Benjamin Bray, the Sunderland agent of the Durham Bank. He had given change for it to a gentleman whom he recognised as De Berenger, but who passed there as Major Burne. The witness was sharply cross-examined as to his memory of the transaction, but remained unshaken. This was practically the last evidence for the prosecution. A further attempt was made to trace the cheque of February 10 for 56*l.* 5*s.*, paid by Fearn to Butt. Evans, the clerk of Bond & Co., who was proved to have paid it, had been expressly desired to be present, but he was called on his subpœna and did not appear. Lord Ellenborough said, 'This entry will be no use to you'; and Gurney, after producing the two napoleons found in the letter-case, said that closed his case.

p. 253.

It was now apparently about ten o'clock at night, and Serjeant Best informed the Court that it would be necessary for the defendants to call witnesses. Lord Ellenborough said, 'I should wish to hear your opening, and to get into the defendant's case, if I can; there are several gentlemen attending as witnesses, who I find cannot, without the greatest public inconvenience, attend to-morrow.' Upon this, Mr. Park got up and said that 'the difficulty we feel, I am sure your lordship will feel as strongly as we do, the fatigue owing to the length of our attendance here, but we will proceed if your lordship desires it.' Lord Ellenborough replied: 'I would wish to get into the case, so as to have the examination of several witnesses, upon whom the public business of certain offices depend, gone through, if possible.' Park said that he had undergone very great fatigue, which he was able to bear, but he would submit to his lordship the hardship upon parties who were charged with so very serious an offence as this, if their case were heard at this late hour, and then a fresh day were given to his learned friend to reply. Lord Ellenborough rejoined: 'It will not be a fresh day when you will be here by nine o'clock, and the sun will be up almost before we can adjourn. I will sit through it if you require it, rather than that.' This settled the matter. Mr. Alley said that he should not trouble his lordship with any witnesses or observations on the part of M'Rae, and Serjeant Best arose to address the jury on behalf of Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt.

Trial, p. 254.

After apologising for the length of time during which he would be compelled to occupy the attention of the jury, the serjeant said that, late though the hour was,[1] he had the consolation of knowing that his deficiencies and omissions would be supplied from the careful attention they had given to the evidence and from the accuracy of the notes taken by the judge. At the outset he admitted the magnitude

p. 256.

[1] It must have been nearly 10.30. Best says, 'Fatigued as I felt myself when I rose to address you, after having been thirteen or fourteen hours in Court,' and the Court sat at 9 A.M.

p. 291.

of the offence charged in the indictment, and protested that, even if it were not known to the law, he would take no objection on that score. His clients would not be satisfied with an acquittal on technical grounds, and he dissociated himself from any questions that had been asked with a view to raising such points.

With regard to Gurney's opening statement, that the connection of the parties in the alleged conspiracy could only be proved circumstantially, he admitted that circumstantial proof was in many cases more satisfactory than that which is direct and positive, but he denied that here there were any circumstances which brought home the crime of conspiracy to any of his clients. All that was proved might be true, and yet they might be innocent. Circumstantial evidence that alone can warrant conviction is the proof of such facts as could not have happened had the accused been innocent. The question of the identity of De Berenger with Du Bourg was in the hands of Mr. Park, who, he trusted, would be able to satisfy them that they were different persons, in which case there was no evidence against any of his three clients. But, even admitting for the purpose of presenting his case to them that De Berenger was Du Bourg, the question still remained whether either of his clients was connected with De Berenger. On this point he most confidently submitted that there was no evidence.

Taking the case of Lord Cochrane first, he proceeded to examine the evidence of his connection with the conspiracy. All that had been proved against him was his sale of 139,000*l.* Omnium on the 21st of February, and the visit of De Berenger to his house that morning; for not one single note of those found in De Berenger's desk on his arrest had been traced into Lord Cochrane's hands. He admitted that there were notes found in the chest of De Berenger, traced into the hands of the other two defendants, but he believed he would be able, by-and-by, satisfactorily to show how these notes came from the hands of one of the defendants into the hands of De Berenger, under circumstances altogether unconnected with the

present inquiry, 'but I am for the present only considering the case of Lord Cochrane.'

It was true, from Lance's evidence, that two 100*l.* notes, which were afterwards changed for one-pound notes at the Bank, were shown to have been in Lord Cochrane's hands for a short space of time, and that some of the notes given in change for them were traced to De Berenger, but the same witness proved that these 100*l.* notes were got back from Lord Cochrane before they were taken to the Bank to be changed. It had been made clear that these notes had been returned into the hands of Butt at some period before they had found their way to the Bank, and before they could furnish any means of proof against the parties. It was by the small notes alone that De Berenger could be connected with the defendants, and the question for the jury was, on whose account they had been received from the Bank. It was clear, from the evidence, that Lance received the 100*l.* notes not from the hands of Lord Cochrane, but from the hands of Mr. Butt. Money transactions took place daily between these two, and the notes which had once been in the hands of Lord Cochrane had never been in the hands of De Berenger.

Passing from this topic, he commented on the conduct of the Stock Exchange in limiting their inquiry to the transactions immediately preceding the 21st of February. Mr. Gurney, acting on their instructions, had stated expressly that Lord Cochrane began his speculations about one week before that date, and it had been represented that all his purchases must have been made in order that he might have as much stock as possible to sell at that particular time. It was not until the cross-examination of Fearn and Hichens that it turned out that Lord Cochrane had been deeply speculating in the Stock Exchange for several months before. Their evidence showed that as early as November last he had bought very largely, and had sold very largely, and that he continued to buy and sell down to the very period of the last sale taking place. In the light of this, the fact of his selling 139,000*l.* Omnium on the 21st of February was no ground for saying that he

was guilty of a conspiracy to occasion a rise of the funds on that day, for there was nothing to distinguish his conduct on the 21st from that which had been his conduct on many days precedent.

There was also another very important circumstance. He had expected to hear that Lord Cochrane had given some particular directions to sell on the 21st; but what were the facts? No particular directions had been given to sell on that day, but this large sale of Omnium was made under Lord Cochrane's general directions, given from the first moment when he became a speculator in stock, that, whenever any event should happen by which the stocks should be raised 1 per cent., the broker was not to wait for particular directions, but to sell. Furthermore, Lord Cochrane had not been present in the city a single hour during the 21st; his stock was sold on that day without any interference on his part, and, indeed, a very considerable part of the stock belonging to all these three gentlemen had been sold before any of them came into the city, and without any particular directions from them.

The course of the case had revealed the common practice of selling stock of which the seller is not in possession at the time of such sale. If Lord Cochrane had been privy to the fraud, would he have contented himself with merely selling the stock that he had previously purchased? Would he not have known that the bubble would soon burst, that the funds would fall back to their proper prices, and that by every sale he so made he must be a great gainer? On that day there was no lack of buyers at the advanced prices, and you would have expected to find him selling stock and scrip in any quantity. Yet he is not found selling the value of a shilling in this manner. Nothing is sold but what has been previously bought, and that under general directions given long previously to the time when the conspiracy could have been conceived. If he had been guilty of the conspiracy, he must on that day have made more thousands than he can be shown to have made hundreds. Mr. Gurney had urged that the fact of selling when he did proved Lord Cochrane's guilty knowledge;

the innocent, he said, on that day did not sell on the first rise in the market, but held their stock in the expectation of gaining still higher prices, whereas Lord Cochrane, knowing that the falsehood of the news would soon be discovered, and that its effect on the funds must be of short duration, sold his whole stock on the opening of the market. There might have been force in this argument had the defendant been found on the Stock Exchange pressing his brokers to make immediate sales.[1] It fell to the ground when it was shown that his stock was sold under orders given before the fraud could have been thought of.

The only remaining point relative to Lord Cochrane was the visit of De Berenger on the morning of the 21st; and here he drew the attention of the jury to the fact that, but for Lord Cochrane, the Stock Exchange would never have known of De Berenger's existence; it was by his affidavit alone that this name was supplied them; without this information so supplied there could have been no prosecution, for no proof had been offered by Mr. Gurney[2] in support of his opening statement that the Stock Exchange had suspected De Berenger prior to the affidavit. The mere circumstance, then, of Lord Cochrane's introducing the name of De Berenger for the first time into that affidavit was of itself sufficient to repel the inference arising from the circumstance of De Berenger's going to his house. Nor was this admission made without Lord Cochrane being fully aware of the consequences. The jury would remember the evidence of Wright, the printer, that Lord Cochrane said, 'I have no reason to think De Berenger was the man, but if he was I have given the Stock Exchange a clue to him.' Who, after this, could

[1] This admission, however satisfactory as regards Lord Cochrane, tells heavily against Cochrane Johnstone and Butt, who were actually on the spot, and is hardly consistent with Lord Cochrane's contention that his interests were sacrificed to those of his co-defendants.

[2] Though no proof was offered at the Trial, the Stock Exchange Committee afterwards declared that they were aware of it five days previous to Lord Cochrane's affidavit; and Isaac Davis had recognised De Berenger in Green Street on the 21st of February. *infra*, p. 237. *supra*, p. 42.

consider Lord Cochrane implicated? He knew that the Stock Exchange were likely to remain for ever in ignorance of the man who came to his house. Was it the act of a guilty man knowingly and advisedly to point out to the prosecutors the only course by which he could be hunted down?

Gurney in his opening had insinuated that Lord Cochrane had sworn an affidavit on which he knew he could not be proceeded against for perjury, but he was convinced that the defendant was under no such impression. And, even so, the character, the situation, the past services of the noble lord forbade the jury to believe that he was so lost to all sense of right and wrong as to depose to what he knew as absolutely false. What evidence had they to convict Lord Cochrane not only of foul conspiracy, but of wilful and corrupt perjury? Lord Cochrane's own affidavit, put in by the prosecutors, outweighed all the evidence they had tendered to contradict it.

Coming to the narrative in the affidavit, what was there improbable in it? Lord Cochrane's visit to King, the lamp maker, on the morning of the 21st was true, and, so far from his going to the city with Butt and his uncle on that morning, it was now admitted that he was not in the city at all on that day. There was no dispute as to his receiving a note while at King's. And as to his inferring, from the fact of its having come from a man in the dress of an officer, that it referred to his brother in Spain, evidence would be called to show that this brother, Major Cochrane, was at the moment dangerously ill. Again, there was no dispute that the person in the dress of an officer was De Berenger. As to the story, which Lord Cochrane related was told him by De Berenger, the latter's expectation of going to America with Admiral Cochrane and Lord Cochrane was confirmed by the evidence of Murray and Le Marchant.[1] To corroborate this part of the affidavit it was not necessary to prove to the jury that De Berenger actually went to Lord Cochrane that morning expecting to

[1] There is nothing in *Murray's* evidence to support this statement. See *Trial*, pp. 213–217.

obtain leave to go to America; it would be enough if they believed that he pretended to him that that was the object of his visit. Had the prosecution shown that all this part of the affidavit was the invention of Lord Cochrane since the 21st of February, that nothing of the sort had ever been thought of before, such proof would have falsified the affidavit, but, so far from offering any such evidence, all the evidence adduced confirmed the statement in the affidavit.

Counsel then commented strongly on Gurney's remark that Lord Cochrane had, by lending him a coat and hat, furnished De Berenger with the means of escaping from his creditors. These clothes were lent not to enable him to escape from the King's Bench, but to appear before Lord Melville and Lord Yarmouth. The jury would say that it was straining the law too much to find a good-tempered English sailor guilty of a conspiracy because he yielded to a request which a more experienced person might not have acceded to.

Mr. Gurney had himself given the reason to explain why De Berenger, if he were Du Bourg, should have gone to some other person's house before his own—namely, to avoid being traced by the postboys. What had previously passed between him and Lord Cochrane afforded a pretext for going to his Lordship, and as to what passed between them at the interview, the only evidence they had offered was the sworn testimony of Lord Cochrane himself, fully confirmed by the witnesses for the prosecution. If this was not the pretence on which De Berenger went there, why did he not rather go to the house of Mr. Cochrane Johnstone, with whom he was more intimate, and who lived in the next street? And was not the fact that Lord Cochrane was fetched back to his house by De Berenger's message in the former's favour? It showed at any rate that De Berenger could not have believed him privy to the plot. If he and De Berenger had been parties to it, why should De Berenger bring Lord Cochrane back from the city at a time when his presence there was essential to the consummation of the fraud? It was clear to his mind that De Berenger did go to Lord Cochrane's

Trial, p. 273.

house under the pretence stated in the affidavit, and that he did not go there, as was suggested by the prosecution, as to a place at which he was to terminate a journey undertaken in concert with Lord Cochrane for the purpose of raising the funds. Rather, however, than leave anything undone in so grave a matter he was going to call other evidence confirmatory of such parts of the affidavit as were capable of confirmation.

Trial, p. 275.

At one point the affidavit was said to be false. It stated that De Berenger, when he came to Lord Cochrane's, had on a green coat, whereas it had been proved by several witnesses that he had on a red one; but supposing that their account as to the colour of the coat was true, and Lord Cochrane's incorrect, would such a mistake weaken the credit due to Lord Cochrane? It could only be a mistake, for what motive could he possibly have for stating that this gentleman came in one coloured coat rather than another? and the mistake was one for which he (Counsel) thought he could account. The affidavit was made some weeks after the meeting took place. Lord Cochrane had often seen De Berenger in the green uniform of Lord Yarmouth's riflemen, and when in making the affidavit he recollected the circumstance of his being dressed in a military uniform, the sort of dress in which he had been accustomed to see De Berenger presented itself to his mind as the dress he wore when his Lordship saw him last.

The circumstance of the publication of the affidavit was in reality the strongest proof of Lord Cochrane's consciousness of innocence. Was a man of his high station and still higher place in the affections of his countrymen likely to commit so sordid a crime? No prospect of gain could tempt him to hazard what he then possessed. His public character would of itself repel such a charge, though supported by much stronger evidence than had been offered in support of this indictment.

Best then dealt with the case of Cochrane Johnstone. He urged that in his case too the prosecution had acted unfairly; in charging him with being a great speculator in

the funds they had limited his dealings to the early days of February, whereas it had appeared that he had been speculating continuously and desperately from the month of November. With equal unfairness they had pressed against him the largeness of his balance on the 21st, which they stated at 420,000*l.*; but, large though it might seem, the very page of figures which the prosecutor put in showed that, on the 14th, his balance of Omnium was 615,000*l.*, so that the very gentleman who is supposed to have meditated a fraud by the sale of stock on the 21st is found reducing his balance immediately before that day from 615,000*l.* to 420,000*l.* To contrive such a trick as had been practised must have taken many days; it must have been in contemplation as early as the 14th. How, then, could the prosecution account for Cochrane Johnstone's conduct in selling between the 14th and 21st, when it must have been his object, if guilty, to collect all the stock he could in order to sell it on the latter day? Let the jury look again at this paper, and see what his daily sales were: 10,000*l.* on the 9th, 105,000*l.* on the 10th, 35,000*l.* on the 11th, 100,000*l.* on the 14th, and so on up to the 19th, the Saturday before the fraud, when he sold 18,000*l.* Could any dispassionate person, looking at that paper, say that Cochrane Johnstone could have contemplated the rise which took place on the 21st? He was charged with making a large profit, but he had made this sort of profit on several occasions before. As to his visit to the city on the Monday, he went there every day, and he did not go any earlier that morning; nay, a very considerable quantity of his stock had been sold before he got there. The whole of the evidence went to show that he was selling on the 21st on the same principle as on the preceding days. And after all what was this profit? The prosecutors put the total at 10,000*l.*; he (Counsel) did not believe it exceeded 6,000*l.*, and in any event it was divisible amongst three people. Nor against Cochrane Johnstone was there any evidence of the sale of a shilling of stock which he had not purchased.

infra, p. 401.

With regard to the taking of a house for Fearn by Cochrane Johnstone, Mr. Gurney had been unable to make

good his opening statement, which had proved to be utterly unfounded. Even if true, it would have been absurd. They wanted no office to help in a fraud that was over in a single day. And as a matter of fact it appeared from the evidence that Fearn had taken a room in the house for himself because he found it convenient, and he had not only retained the room, but was at the moment occupying the whole house.

The next fact pressed by the prosecution was the letter left at De Berenger's lodgings on the 26th. This had been loosely proved, but he would not dispute it, for the acquaintance of Cochrane Johnstone with De Berenger was admitted; they were in the habit of dining together, and what was there strange in one acquaintance leaving a note at the house of the other? The prosecution had ransacked De Berenger's effects, but they had not been able to produce this letter, and though they had possession of all his papers not a scrap of one of them was in the handwriting of his clients.

Lastly, with regard to the money found on De Berenger, some of which had certainly passed through the hands of Cochrane Johnstone, he was prepared with evidence which would most satisfactorily explain the transaction. De Berenger, who was a most ingenious artist, had been engaged by Cochrane Johnstone to draw plans for a new Ranelagh, to be called Vittoria. The money found on De Berenger was partly payment for these plans, and partly lent by Cochrane Johnstone on De Berenger's note of hand; 50*l.* had already been paid in September, 200*l.* more was paid about the 25th of February, and De Berenger, being in great distress, appealed to Cochrane Johnstone for a loan of 200*l.*, which the latter granted after taking a few days to consider.

Trial, p. 283

The evidence against Butt was much the same as against Cochrane Johnstone, and many of the previous observations consequently applied to his case also. Butt is found to have had a large balance on the 21st of February, but he had had as large a one before. He sold on that day, but he had sold as much before. He made only

1,300*l.* on that day: he had made much more on other days. There was not an atom of evidence connecting him with De Berenger; no man has proved that they were ever in the same room, and it is merely because Butt is a great purchaser of stock, and some of his money is found passing through the hands of Cochrane Johnstone into the hands of De Berenger, that the jury are desired to find them all connected together in this conspiracy. The passing of the money could not be explained in Butt's case by such clear evidence as in that of Cochrane Johnstone, but he could relieve him from the effect none the less. It would be shown that the money paid and advanced to De Berenger by Cochrane Johnstone was principally in 1*l.* notes, and was it wonderful that these should have passed through the hands of Butt, who was proved to act as a sort of agent for Cochrane Johnstone? The prisoners were joined in the indictment, and so could not be called for one another; consequently he must be content with the best evidence he could offer, and he could do no more. Mr. Gurney had admitted that he could not offer direct evidence for the prosecution. That same observation must apply even more strongly to the defence.

So far the learned Serjeant said he had divided the cases of his three clients, but there were some topics common to all. Mr. Gurney had admitted he could not put all the conspirators in a room together, but if they were so connected he might have brought these eight persons a great deal nearer together than he had done. Did any man ever see them together? Between a great number of them there was not the least proof of connection. The evidence, indeed, was the other way. Holloway, in the presence of Lyte, had told the Stock Exchange Committee most distinctly that he knew nothing of Lord Cochrane, Mr. Cochrane Johnstone, or Mr. Butt. Had he been able to implicate them, he would not have been a defendant before the jury that day, but he would have been amply rewarded for any testimony by which the conviction of these his co-defendants could have been secured. The seizure of De Berenger's effects had not shown a single example of

communication by letter between the parties; without communication there could be no conspiracy, and no communication, either by conversation or writing, was proved to have taken place between them. Such a conspiracy could not have been carried into effect without the complicity of some broker, and had his clients been parties to it they would certainly have consulted some of the brokers who had been examined in Court. Yet, from the evidence of these men, it was clear that they had not, and the prosecution did not even suggest it.

Lastly, the learned Counsel dealt with the witness Le Marchant. This evidence did not, it was true, affect any of his clients; and he was prepared, he said, to show that this man was utterly unworthy of credit, and it would be proved to the jury by his own letters that he only came before them that day because Lord Cochrane had refused to lend him money. After arguing that the correspondence between the two afforded the strongest corroboration of Lord Cochrane's innocence, he stigmatised the whole conduct of Le Marchant in thoroughly well-deserved terms.

Trial, p. 291.

In conclusion Serjeant Best said he was conscious that, fatigued as he felt himself, when he rose, after having been thirteen or fourteen hours in Court, he had very imperfectly discharged his duty. He did not ask the jury to take a merciful view; he only asked them to look at the case fairly and impartially. They would recollect the situation in life of these defendants, all of unblemished character, two of them in high stations and members of a very noble family, 'and with respect to one of them he has reflected back on a long and noble line of ancestors more glory than he has received from them, and it would be the most painful moment of my life if I should to-night find that that wreath of laurel which a life of danger and honour has planted round his brows should be for a moment blasted by your verdict.'

This speech should be closely studied, both for what it says and for what it does not say. It failed to convince the jury, and it failed to satisfy Lord Cochrane. Its interest to us, in considering Lord Ellenborough's conduct, lies in the fact that it

was the defence actually put forward at the trial, and differing *toto cœlo* from what Lord Cochrane and his apologists have subsequently presented—the defence in the light of which the Judge had to sum up and the jury to return their verdict.

There is a further reason, however, why, in justice to Lord Ellenborough, the speech should be carefully scrutinised; and that is because it has been frequently and confidently asserted that, by forcing the learned Serjeant to speak at so late an hour of the evening, after a long day in Court, Lord Ellenborough prevented him from doing his best for his clients, and that it was through his Counsel being 'completely exhausted and worn out by extreme fatigue' that Lord Cochrane was convicted. It becomes necessary, then, to see how far this is true, and whether the failure to obtain an acquittal can be in any way attributed to the physical and mental fatigue of Serjeant Best.

infra, p. 186.

In the first place, fault has been particularly found with him for throwing over that part of the affidavit of the 11th of March in which Lord Cochrane described De Berenger as appearing before him clad in a green uniform; and nearly every writer, who has dealt with his speech, has condemned him for so doing and for what they describe as his lame explanation of the so-called mistake of Lord Cochrane. One of them says that it was tantamount to a positive surrender of Lord Cochrane's innocence, and that 'well might he complain of the conduct of the Judge in compelling the Counsel to enter on his defence at midnight[1] after his faculties were so completely bewildered.' To this charge it is sufficient to answer that, as was well known to the writer whom I have just quoted, De Berenger's coat was described as being *red* in Serjeant Best's own brief,[2] and that he would have been liable to the gravest censure had he discarded his instructions and treated it as having been *green*. But this question of fatigue is so important, and an erroneous impression has sunk deep into the public mind with so prejudicial an effect upon Lord Ellenborough's reputation, that I feel bound to offer some remarks upon the general tactics of the defence, with the view of demonstrating that the line adopted in the Serjeant's

'Review of the Case of Lord Cochrane,' p. 26.

[1] As a matter of fact he began at about 10.30 and had nearly finished by midnight.

[2] Apart from other reasons which induced his solicitors to so describe it, I would call attention to Lord Cochrane's own 'minutes furnished to Messrs. Farrer,' in which he says 'De Berenger wore a grey great coat without any trimmings, and had a green coat, *or a coat with a green collar under it*.' Compare p. 216, *infra*.

Letter to LordEllenborough, App. VII., 'Autobiography,' vol. ii. p. 431.

speech was due neither to want of judgment nor to temporary aberration of intellect, but was forced upon him both by his instructions and by the course of events in the trial itself.

supra, p. 55, and Letter to Lord Ellenborough, App. VII.

From a statement made by Lord Cochrane's solicitors, already alluded to, and discussed at length in a later chapter, we know that at the consultation on the 6th of June, when the joint defence was definitely decided upon, the distinguished men who acted as Lord Cochrane's Counsel came to the conclusion that though his servants had better be in attendance, neither they nor any other witnesses should be called. And I have attempted to indicate the several places in the case for the prosecution where it is clear that the defence were doing all they could to avoid calling evidence, and to show that Gurney's opening speech was framed with a view to this contingency.

The reason is clear. If a single witness were called or a single piece of documentary evidence were tendered for the defence, this at once gave Gurney the right of reply, that invaluable privilege of having the last word before the Judge summed up, all the more important in those days, when the defence had but one speech, and that before their witnesses were called. And

Cf. *infra*, p. 212.

if they did call witnesses they were practically bound to call everybody who was in a position to confirm their story, under penalty of laying themselves open to most damaging criticism. Viewed from this standpoint, it is essential to consider what object the defence could hope to attain by calling witnesses, sufficient to counterbalance the danger of giving Gurney the reply.

Taking the case of Lord Cochrane first, the evidence against him arranged itself under three heads:—

1. His Omnium transactions.
2. The traced bank notes.
3. The visit of De Berenger to Green Street.

As to the first of these, the sales, &c., there were no further witnesses to call; all the facts available for the defence had been got out on cross-examination. The same remark applies to the bank notes, with regard to one of which—the note for 200*l.*—Lord Cochrane had been unable to supply his solicitors with any

infra, p. 282.

explanation previous to the trial, though he afterwards published an account, which will be considered in its due place. There remained only the visit of De Berenger, and here the credibility of the story told in Lord Cochrane's affidavit of the 11th of March rested on the likelihood of three things being true:—

(*a*) That Lord Cochrane returned to his house through anxiety on behalf of his brother.

(*b*) That he had reasonable grounds for believing that De Berenger required to alter his dress in order to pay a set of official visits or to go home in.

(*c*) That Lord Cochrane was correct in the account he gave of De Berenger's costume.

A little thought will show that all three were matters for explanation by argument, rather than for confirmation by such evidence as the defence possessed.

(*a*) As to Lord Cochrane having returned on account of anxiety about his brother, the credibility of this was actually impaired by the evidence called, which, as we shall see, went to establish the fact of his brother being on the sick list, whereas in the affidavit itself there was no illness mentioned, but 'apprehension lest some accident had befallen to my brother.' *infra*, p. 154.

(*b*) As to De Berenger wanting a change of undercoat to visit Lord Yarmouth and other officials or to go home, this was only likely in case he had some sort of red coat on; besides which, the fact had been abundantly proved by the prosecution.

(*c*) Taking this evidence, coupled with the fact that the solicitor's examination of the servants had led them to describe in the brief the coat worn by De Berenger on the morning of the 21st as red, it was impossible to substantiate Lord Cochrane's version, and the only plan was to explain it away on the ground of mistake and forgetfulness, which also obviated the necessity of accounting for the fact of Isaac Davis having been allowed to sail. *infra* p. 154

Thus, as regards Lord Cochrane, it seems to me that counsel were abundantly justified in desiring to call no witnesses. It is true that there was the evidence of Le Marchant, but he was almost entirely discredited in cross-examination before the damaging letters were read by the defence. They had previously appeared in the 'Morning Chronicle;' their contents were probably known to some of the jury, and Best's observations were quite enough without any necessity for reading them. No witnesses were called for Butt, and when we come to see the nature of the evidence produced on behalf of Cochrane Johnstone we shall realise how loth Counsel of experience must have been to have recourse to it.

It is clear, then, I think, that had Serjeant Best and his colleagues stood alone in the case, or had a free hand been

allowed them by their clients, no evidence would have been called, and it seems to me that they came into Court in the belief and hope that their plan of campaign would be adopted. They could have met with no opposition from the Counsel who appeared for Holloway and his confederates (for they called no witnesses), and we have seen from the letter addressed by Park and Richardson to De Berenger how strongly *they* realised the importance of suppressing the *alibi*. How it came to pass that Serjeant Best was overruled, and that the main body of the defendants committed themselves to so disastrous a policy, remains a mystery. It is possible that De Berenger insisted on having called his witnesses in the forlorn hope of saving himself, and it is also conceivable that he was persuaded to do so by Cochrane Johnstone, who saw that if witnesses were called for De Berenger witnesses would be called for him also, but not otherwise, and who may have preferred the reading of the absurd correspondence which he tendered to a mere suggestion on the same lines being made by his Counsel. His intimacy with Tahourdin, who acted as De Berenger's solicitor at the trial, but was also employed by Cochrane Johnstone as his man of business, afforded the opportunity for getting the elaborate but disastrous defence brought forward.

supra, p. 96.

However this may have been, Best found himself driven to call witnesses, and the only question remained whom to call, so as to damage his case as little as possible. I will not anticipate their testimony further than by saying that, with the exception of Le Marchant's letters, the evidence on Lord Cochrane's behalf related solely to the corroboration of his affidavit on such points as were capable of corroboration. King, the tin-maker, at whose house Lord Cochrane was working on the morning of the fraud, and the footman Dewman, who brought De Berenger's note, confirmed one part of it; and the First Lord of the Admiralty and other official witnesses showed that there had really been negotiations for taking De Berenger to America. Lord Cochrane has complained bitterly that his servants were not called to corroborate the particulars of his affidavit relative to De Berenger's dress—namely, a grey great coat and a green under coat and jacket. But apart from the clear proof given by the prosecution that the coat in which De Berenger entered the house was red, we know from the solicitors' statement that their examination of the servants had convinced them that they could not be depended upon to corroborate their master on this point, and Lord Cochrane's own instructions gave them, as we have

p. 562, *infra*, p. 182.

infra, pp. 212, 218.

infra, p. 183.

just seen, the alternative of dropping the *green* in the *body* of the coat and describing it as a coat with a green collar. Moreover, in their published affidavits, which were in Court, forming part of Butt's pamphlet, Dewman and Mary Turpin had sworn only to the *collar* of De Berenger's coat, which they described as green; but it could not have been unknown to the defence, and it was subsequently proved by one of their witnesses, that the uniform of the Duke of Cumberland's sharp-shooters, which was the only uniform which De Berenger was legitimately entitled to wear, had no green collar, but a crimson one. Of the two coats, which formed the uniform of this regiment, the under coat had a crimson, and the upper a fur collar. The servants' evidence, then, would have been absolutely destructive to the theory that De Berenger was in his green volunteer dress, and would have even strengthened the case for the prosecution that the uniform was the scarlet one of a staff officer, with blue facings and collar, for it is well known that certain shades of green and blue may easily be confused. From these considerations it is manifest that it was from no carelessness or forgetfulness that Serjeant Best admitted that the coat was red or failed to call the servants to swear that it was green. He did so because he could not help himself; and the fact of the coat being red gave some plausibility to Lord Cochrane's story of the change of clothes.

infra, p. 159.

infra, p. 212.

But were further evidence required to show that Best was in remarkably full possession of his wits that evening, it would be supplied by the way in which he treated the really far more serious evidence connecting De Berenger with Lord Cochrane through the bank notes; and we shall see afterwards what very slender and treacherous material he must have had to work with.

It will be remembered that there were two sets of bank notes which were proved to have been in Lord Cochrane's hands on the 19th of February, the produce of which was found on De Berenger at Leith. One of these sets, the two 100*l.* notes, Nos. 18,468, 16,601, Lord Cochrane had asserted in his instructions to his solicitors, were given to Butt in repayment of a loan, and Scarlett, as we have seen, had cross-examined Lance, Fearn's clerk, at great length, but without any conspicuous success, with a view to establishing this.[1] Of the other, the 200*l.* note, Lord

infra, p. 231.

supra, pp. 117–119.

[1] *Letter to Lord Ellenborough*, p. 110: 'On the 15th of February I borrowed 200*l.* of Mr. Butt; on the 19th of February I received the draft before mentioned of Mr. Smallbone, and out of the produce of that draft I

Letter to Lord Ellenborough, p. 114.

Cochrane himself said afterwards he was unable, till after the trial, to give any account whatever.

It had been shown, by the evidence, that this 200*l.* note had undergone an intermediate change into two other 100*l.* notes, Nos. 19,482, 19,592, and thus, prior to the final transmutation of the whole lot into one-pound notes, there were four notes of 100*l.* each, as to two of which Best had some sort of an explanation to give, while he had none whatever for the other two. The only chance lay in confusing these four notes together until they all seemed to be covered by the explanation which had only been offered as to two of them. Gurney had described the 200*l.* note as being exchanged by Christmas at *Butt's*[1] orders, whereas the evidence showed that Butt had really nothing whatever to do with this actual note, and only became possessed of the proceeds after it had been converted into Nos. 19,482 and 19,592. The notes changed by Butt's orders were the two original 100*l.* ones (18,468 and 16,601), which he sent to the Bank by *Lance*. Of this slip Best took full advantage, and I give his own words:—

supra, p. 82.

p. 120.

p. 117.

Trial, p. 260.

'Gentlemen, the only part of the evidence which has the least tendency to connect my Lord Cochrane, by means of the notes, with Mr. De Berenger, is the evidence that was given by a person of the name of Lance; there is not one other witness that attempts to state that a single note traced from the hands of Lord Cochrane ever was found in the hands of Mr. De Berenger. Now, if you will have the goodness to attend to Lance's evidence, you will find that there were for a time put into the hands of Lord Cochrane two 100*l.* notes, which were afterwards found at the Bank, and in exchange for which 200 1*l.* notes were given to the person changing them, and that a considerable quantity of those 1*l.* notes have certainly been proved to be found in the chest of Mr. De Berenger; but permit me to state that though those two 100*l.* notes, by which 100 1*l.* notes were afterwards produced, are for a short space of time shown to be in the hands of Lord Cochrane, the same witness tells you that those 100*l.* notes were got back from my Lord Cochrane again before they were exchanged at the Bank, for he tells you that he carried those two 100*l.* notes to the Bank *for Mr. Butt*. Gentlemen, my learned friend, who cross-examined Mr. Lance, certainly

immediately repaid Mr. Butt by means of the two notes of 100*l.* each.' Compare this with the minutes furnished to Messrs. Farrer for his defence by Lord Cochrane (*Autobiography*, vol. ii. pp. 431–2), *infra*, p. 231.

[1] 'The 200*l.* note was by order of Mr. Butt exchanged by Christmas, a clerk of Fearn's, at Bond's.' Trial, p. 51, *supra*, p. 82.

could not get from him that he was present at the time when my Lord Cochrane paid those two notes into the hands of Mr. Butt; but it is perfectly clear, from that which he subsequently stated, that at some period before they found their way into the Bank, and before they can furnish any means of proof against the parties, they must have been returned to Butt's. These notes might have been in the hands of any one of you, gentlemen; but the question is, on whose account the 200 1*l.* notes were received from the Bank, for it is these small notes which can alone connect the party with Mr. De Berenger. Now, I say, Mr. Lance, in a part of his evidence, stated that though he was not present at the time Lord Cochrane returned the two 100*l.* notes to Butt, yet that he afterwards received those notes, not from the hands of Lord Cochrane, but from the hands of Mr. Butt. For Mr. Butt he went to the Bank; for Mr. Butt he got the 200 1*l.* notes, and those 200 1*l.* notes he delivered back into the hands of Mr. Butt. Gentlemen, I am sure, therefore, that if I have made myself understood upon this part of the case I have completely released Lord Cochrane from the effect of this evidence, for though the two large notes were once in his hands, these notes were never in the hands of De Berenger. The notes found on him were the small notes given in exchange for them at the Bank, and these were given to Mr. Butt, and not Lord Cochrane. It is perfectly clear, therefore, that though these had been in the hands of Lord Cochrane, from the money transactions taking place between them every day, it was Mr. Butt that was the possessor of those notes at the time the 1*l.* notes were obtained for them. I am satisfied, therefore, you will see that this evidence does not connect Mr. De Berenger with Lord Cochrane.'

The effect of this is to bring all the four 100*l.* notes down to the same level, and to fix Butt with the responsibility of sending them all to the Bank to be exchanged into 1*l.* notes, so that, without admitting that to do so was an act of criminality, it at any rate freed Lord Cochrane from all share in that part of the transaction. It is true that the *evidence* showed this only to be correct as regards the two 100*l.* notes changed by Lance, but Gurney had, in his opening, stated it was also the case with regard to the 200*l.* note changed by Christmas, which was really sent by Fearn without the intervention of Butt, and which there is no evidence to show was ever in Butt's hands at all, though its produce in one-pound notes reached him, and we may be sure that if Best had been pulled up on the point he would have made use of the

ready and telling rejoinder available. The whole question of the notes was a very confusing one, and by this way of treating it Best gave the impression of having explained away everything, while actually leaving 200*l.* out of the 400*l.* untouched. So far from exhibiting signs of fatigue and forgetfulness, he seems to me to have exhibited great resource and adroitness. Whether he could have ventured to adopt this line in a speech delivered in the morning, with the judge and jury perfectly fresh, is another matter.[1]

[1] This estimate of Serjeant Best's speech is founded on very careful study, but, except for the general approval of the speech expressed by the Attorney-General and Solicitor-General in the House of Commons, I can quote no authorities in my favour. On the other hand, the late Mr. Townsend, Q.C., in his *Modern State Trials*, vol. ii. p. 1 (published in 1850), gives a very different reading of it. His account of the trial, while making full allowance for 'the stern integrity and iron virtue of the Chief Justice,' is devoted to 'satisfying the sceptical and demonstrating to the conviction of the candid that the verdict of guilty against Lord Cochrane was rash and inconsiderate.' He admits that the speech of Mr. Serjeant Best, 'though made by a weary, jaded, and dinnerless advocate, displayed in parts much ability and shrewdness,' but he blames him for 'falling into the fatal mistake of admitting an error into the colour of the dress,' which is supposed 'to have wrecked his client,' and says that had he been permitted a night's interval there was a much better solution which he might have suggested—namely, that De Berenger, having more than an hour's leisure—might have changed his dress in the parlour at Green Street. This would be plausible enough if any new evidence sufficient to call for reconsideration had been produced at the trial, but the case for the prosecution had been familiar to Best for weeks past, and that his line of defence was deliberate is clear from his advice, in consultation, to call no evidence. The suggested solution is mentioned by Lord Cochrane only to be rejected, and there were difficulties in its way unperceived by Mr. Townsend. Mr. Townsend was misled by Lord Cochrane's statements into adopting the view, which I have previously shown to be unwarranted, that the noble lord neglected his own defence and was ignorant of the contents of his brief, and he does not seem to appreciate how impossible it was, after the affidavits they had sworn, to call the servants as to the green coat, especially when in the opinion of the solicitors they would have admitted in cross-examination that the body of the coat was red. After carefully reading Mr. Townsend's criticism I am compelled to adhere to my opinion that the course adopted was the only one open to Best.

Townsend, p. 9. p. 8. p. 46 p. 4. p. 50. Letter to Lord Ellenborough, p. 11, *et seq.* *infra*, p. 212.

Mr. Townsend is also very severe on the joinder of the three defendants, and says that 'had either Topping, Scarlett, or Brougham defended Lord Cochrane singly, and presented his case apart, there is every reason to believe, from the evidence, that there would have been a different result.' Whether he was aware that those three gentlemen concurred with Best in advising a joint defence I know not, but at any rate in so doing they had their briefs before them; they probably knew more than Mr. Townsend did, and I am content to follow their judgment.

p. 8.

One unconscious tribute to Best's astuteness Mr. Townsend is constrained

Lord Cochrane, in the House of Commons, did not scruple to say that Serjeant Best was not really *his* Counsel, but Cochrane Johnstone's, and that he had expected Topping or Scarlett to have spoken on his behalf. It will, I think, be impossible to read even the abstract of Best's speech, which I have given, without feeling that its main strength is concentrated on the effort to get *Lord Cochrane* off, an effort in which, I believe, he nearly succeeded. The one person who I think possibly had some right to complain that his case was sacrificed was the unlucky Butt; however, fortune had befriended him, perhaps beyond his merits, by procuring the opportune absence of Evans, the Bank clerk, and Wright, the landlord, who would both, if present, have sworn to other bank notes, which had once been his, and had subsequently been traced into the presence of De Berenger.

Hansard, vol. xxviii. p. 559, *infra*, p. 199.

I may also point out that Best's speech was practically an acknowledgment that the prosecution had proved their case against De Berenger.

He had begun by pointing out that he did not admit the identity of Du Bourg with De Berenger; that he hoped Park would succeed in satisfying them that they were different individuals, but that it was necessary, for the sake of Lord Cochrane's innocence, to argue on the assumption of De Berenger's guilt. This is always a difficult position for an advocate to maintain, and as his speech went on it appears pretty plainly that he was treating De Berenger as guilty, not merely for the purpose of argument, but because it was impossible for any sane person to doubt the fact.

to pay. I hope that I have succeeded in showing how craftily the Serjeant blended up the various 100*l.* notes; his sleight-of-hand was too dexterous for Mr. Townsend to penetrate, for the latter in his summary of the evidence leaves out of sight altogether the 200*l.* note and its proceeds, says that only sixty-seven 1*l.* bank notes were found on De Berenger at Leith, and that 'all these had been given in change to *Mr. Butt* for two notes of 100*l.* each, handed over in part payment of a cheque drawn by him to Lord Cochrane,' which was not the case, 'and by him passed on to Mr. Butt on the 18th of February.' The 200*l.* note changed by order of Fearn has disappeared altogether, and thus the explanation which Counsel strove in 1814, without success, to impress upon a jury who foiled him by the careful way in which they took the numbers of the notes, has imposed in 1850 upon a gentleman, candid and impartial, who seems to have neglected this precaution. And it will be also observed that he is incorrect as to the quantity of 1*l.* notes found on De Berenger, which he puts as being sixty-seven only. Gurney's opening, borne out by the evidence, was that sixty-seven of the 1*l.* notes arising from the original 200*l.* note, and forty-nine of the 1*l.* notes arising from the two original 100*l.* notes (Nos. 16,601 and 18,468), were discovered in the desk at Leith.

p. 45.

Trial, p. 292.

Mr. Park came next on behalf of De Berenger. It was well past midnight ('now sixteen hours and a half since I left my dwelling'), and after alluding as Best had done to the fatigue which he had endured in the course of the day, he called upon the jury, exhausted as they might be, for their most serious attention, and reminded them that they must not allow their fatigue to disable them from discharging the duties of their oath.

As De Berenger was not only convicted, but has in his own book and correspondence admitted his guilt, a very brief analysis of his Counsel's speech will suffice. We know under what circumstances of discouragement it was made. Park had practically but one line of defence—namely, that Du Bourg and De Berenger were different persons—and when he heard Lord Ellenborough say, 'To be sure when it (their identity) is proved in the way it has been it can be of very little consequence,' his heart must have sunk within him; his memorandum to De Berenger, in which Richardson concurred, shows the last despairing effort to avoid calling the *alibi* evidence; unimpeachable as the proofs of his witnesses may have appeared on paper, his long experience at the Bar must have told him what a two-edged weapon he was about to wield. His language in opening this part of his case shows his reluctance most plainly, and, read in conjunction with his memorandum to De Berenger, gives us an idea of the conflict that must have been raging all day to keep this and the other evidence out of Court.

p. 110.

supra, p. 96.

Trial, p. 312.

Now, gentlemen, upon the subject upon which I am about to address you I do not think it absolutely necessary to go into it, and I should not at this hour in the morning call evidence, but in a matter so highly penal as this is, and where I am placed in so delicate a situation, and in which, thank God, I can very seldom be placed, I do not think it right to act on my own judgment, where my client assures me that he was not the man, and is an innocent person, and that he is determined because he knows perfectly well that what he says is the truth, to have his witnesses called; he shall have those witnesses called, for I choose to have no responsibility cast upon me that does not belong to my situation. Gentlemen, I shall prove to you most

completely that which will dispose of the case, if it is believed. I trust I have already shown that it is a case depending upon such frail testimony, as it stands, that it is not worthy of any degree of credit. But I am instructed that I shall be able to call five or six witnesses who all saw this gentleman in London at an hour which was impossible consistently with the case for the prosecution, and who have no interest, and had better means of knowledge than those who have been called before you.

No wonder that there is a tone of querulousness running through the whole speech, which cannot be accounted for merely by fatigue and the lateness of the hour, and which contrasts with the bold and confident front opposed by Serjeant Best to the heavy weight of evidence. Abuse of the Stock Exchange, 'that place where all this infamy is daily transacting'; abuse of the 'avidity' of the press, 'Thank God I never read newspapers with that attention some gentlemen do, for I think it is a great waste of time'; constant complaints of prejudice introduced into the case, and of undue activity for a conviction shown by Gurney,—topics such as these cover much of the ground.

Trial, p. 295.

In the first place he complained that an affidavit, supposed to have been made by William Smith, had been read verbatim from some pamphlet. His learned friend must have known that it could not be given in evidence without calling William Smith, and this he had not done. Nor had he made any attempt to substantiate his opening statement that De Berenger had made efforts to get back the identical notes that had been taken from him at Leith. Again, why should De Berenger be made to suffer because of the various publications that the other parties had made? It was true that those who had published had only followed the example set them by the Stock Exchange, the prosecutors, but De Berenger had not made a single one himself,[1] and nothing that any of the other publications contained could be evidence against him. Leaving for a moment the evidence by which De Berenger was supposed to be traced

See Gurney's Speech, Trial, p. 48.

[1] As a matter of fact De Berenger had allowed his name to be used in a pamphlet entitled an 'Antidote to Detraction and Prejudice,' published the 4th of June on the eve of the trial by one John Brown, and had supplied materials for it.

from Dover to London, he dwelt at some length on 'the great point upon which my learned friend relied as affecting him after he came to London, the contradictory statement, as was supposed, of Lord Cochrane in his affidavit.' On that affidavit, however, he was, for his part, prepared to take his stand. The prosecution had tried to establish that De Berenger had called on Lord Cochrane to tell him of the news he had been circulating, and so enable him to sell his stocks at a profit; but this was absolutely inconsistent with the evidence given by the brokers, according to whom everything must have been sold before Lord Cochrane had got back from Snow Hill; had it been for this purpose that De Berenger sought out Lord Cochrane in Green Street he would have followed him to Snow Hill. The prosecution professed that they could not understand that Lord Cochrane should have cared to get the earliest news of his brother, who was in Spain. They said it was absurd and ridiculous to suppose that he would have come back to see an officer. For his own part, he could hardly conceive a motive stronger in the mind of a good man and a brave officer than that stated by Lord Cochrane; and Serjeant Best had stated that he would explain the whole matter by evidence which he was about to call.

Trial, p. 301.

It was common ground that De Berenger had got into distressed circumstances; and it would be proved to them that Sir Alexander Cochrane had applied to the First Lord of the Admiralty to enable him to go out to America; that this had fallen through on a question as to what rank De Berenger should have; that De Berenger had nevertheless come out that day on this business, dressed, as they had heard, with a view of going immediately off to Portsmouth; and that when he found that my Lord Cochrane could not take him, he felt that he could not return unnoticed in uniform at noonday to his lodgings in the Rules. And it would be further proved to them that though it might have been imprudent of Lord Cochrane to do so, yet he *did* lend clothes to De Berenger; for it would be shown by evidence that the latter returned to his lodgings in black clothes, having in a bundle those which he had taken off his back.

And as to what his uniform exactly was, they had Lord Cochrane's affidavit, and might accept the learned Serjeant's explanation or not as they chose. Trial, p. 301.

It might be asked, when De Berenger found that he could neither go with Lord Cochrane nor in any other capacity to Sir Alexander Cochrane, who was then out of the kingdom, why did he then escape from the Rules? The answer was that he was threatened with yet other creditors, and though only actually in duress for 350*l.* he was under apprehension that he should have detainers against him for 4,000*l.* more. p. 302.

De Berenger's acquaintance with both Mr. Cochrane Johnstone and Mr. Basil Cochrane had arisen, in spite of all suggestions to the contrary, out of the plans for this new Ranelagh, which was to be built on Mr. Cochrane Johnstone's Paddington property, and Serjeant Best would prove to them that the payment of 200*l.* was made in connection with it. As to Le Marchant's story, he put it to the jury that, from his own statement, he must have invented it merely to implicate Lord Cochrane in the transaction. p. 307.

As to the various writings which had been brought up against his client, take the memorandum, and (putting Mr. Lavie's evidence aside, as too slight) there was nothing but the mere possession of it by De Berenger to bring it home to him, and that was not enough; as to the value of Mr. Lavie as a judge of handwriting, it would be shown to them, from the evidence of people who had known De Berenger's writing for a long time, that the Dover letter was not in his hand. And with this the Dover case must fall to the ground; the letter was the sheet-anchor of it all. As to what had been promised, that the Davidsons would prove that De Berenger was not at home on the Sunday night, that, he contended, had failed, and they had proved no such thing.

This brought the case down to the *alibi*, and I have shown how reluctantly Park had approached it, but once embarked he went in boldly. Having devoted some little space to criticising

the evidence that had been given as to the identification, he proceeded as follows :—

Trial, p. 815.

'Hear then, gentlemen, how I shall prove this case. This person, by the consent of his bail, Mr. Tahourdin, as I have told you, was continually soliciting for the situation he was desirous of obtaining, for the purpose of going out to America under Sir Alexander Cochrane; he was therefore continually violating the Rules; and in order to do that with safety he used to go down a passage and take water, instead of crossing Westminster Bridge; because he thought that on Westminster Bridge he should be more likely to be met by the officers, and so more likely to get to the ears of the marshal, so as to lose the benefit of the Rules; he was well known to the usual watermen plying there; and I have two watermen here, who will prove to you that on that Sunday morning, which was the first Sunday after the frost broke up, so as to open the River Thames, which had been shut a considerable time,—that on the first Sunday after—namely, the 20th of February—this gentleman crossed at that ferry to go over to the Westminster side. Gentlemen, I shall prove to you that in the course of that day he was at Chelsea; he had been known at Chelsea, having lived there for a considerable time before he was in the Rules of the Bench. I will prove that he had called at a house which I will not name, because we shall have that from the witnesses, from whence the stage coaches go; that the ostler at that house perfectly well knew him, and that he knew his servant; that he told him the coach had gone off at an early hour in the evening, and there was no coach to go for some time; he will tell you, that he knew this gentleman, and is positively sure that he was there. I shall prove that he went to another house in the course of that evening; and I have two or three of the members of that family who saw and conversed with him between eight and nine in the evening of the Sunday, so that by the course of time it was absolutely impossible that he could have been at Dover by one in the morning, if he had been at this gentleman's house at eight in the evening. I shall prove that after that he went home to his lodgings. I shall prove that he slept in his lodgings; that his bed was in the morning made by his maid-servant; that he constantly slept at home, and that he did that night. I have his servants here, who will prove these facts. I allow that he went out that morning, and went out in regimentals, which they will describe to you, and went to Lord Cochrane's upon the errand I have described to you.'

How far the witnesses bore out the story will be seen immediately. With one important omission they made their due appearance in the witness-box, but the watermen were not forthcoming, which occasioned Gurney sarcastically to observe, that he supposed the river was frozen again that morning (June the 8th). Trial, p. 487.

With a final appeal to the jury to free themselves from all the prejudice infused into their minds, Mr. Park sat down, having occupied the jury for nearly two hours.

It was then past two o'clock, and it became the turn of Serjeant Pell to address the jury on behalf of Holloway, Lyte, and Sandom. His speech will be found at p. 319 of the Trial; nor is it necessary for me here to say more than that he ingeniously and powerfully strove, as the only means of defence open to him, to show that his clients and the North Fleet part of the plot were entirely unconnected with the Dover branch of it, and with the so-called Du Bourg. They were, some of them, by their own confession, guilty of a fraud on the Stock Exchange; but if it were held that this fraud was distinct from the main plot, he urged they could not be guilty of the conspiracy with which they were charged.

By the time he had concluded it was three o'clock on Thursday morning, and Lord Ellenborough adjourned the Court until ten o'clock, saying that this would be the most convenient period for dividing the cause, as the evidence would probably occupy a considerable time.[1]

One of the charges brought by Lord Cochrane against the Lord Chief Justice in connection with this part of the trial is, that he not only 'compelled the Counsel for the defendants to enter upon the defence at or near midnight, when they complained of great fatigue from long attendance,' but that he 'assigned insufficient and artificial reasons for so proceeding.' With the general question of the adjournment I deal elsewhere, in order to interrupt as little as possible the thread of the See p. 242, *infra*.

[1] From a calculation based roughly on the number of pages assigned to the speeches in the shorthand report, I have calculated that Best, who has thirty-six pages, spoke from 10.30 to 12.30 (two hours); Park, who has twenty-six, from 12.30 to 2 (an hour and a half), and Pell, who has fourteen, from 2 to 3 (one hour). But this is mere conjecture; we have only one fixed point, *e.g.* 3 A.M., when the Court rose, and the rest has to be divined from observations made by the speakers themselves.

narrative; but these 'insufficient and artificial reasons' can best be treated here. It is alleged with some plausibility that, having called on the defence with the object of getting through the evidence of important public servants, and so releasing them from further attendance, Lord Ellenborough adjourned the Court without hearing any witnesses at all, and so prejudiced the speeches of Counsel without making any effort to justify himself by carrying out his programme. These official witnesses, it is argued, could have been got through in a very short space of time, and thus some colour of consistency could have been given to Lord Ellenborough's conduct.

I think the answer is not far to seek. Until Counsel had actually finished speaking it was impossible for the Judge to form any correct idea either of the length of their speeches or the nature and extent of the evidence which they proposed to call. There was nothing in the course hitherto taken by the case from which Lord Ellenborough could infer that the speeches would last from 10.30 P.M. to 3 A.M., or that a mass of evidence would be opened to the jury which it would take five or six hours next day to get through. His experience, as an advocate and a judge, must have shown him the reluctance to call evidence which was displayed by the defence: the little tricks to get the benefit of evidence without the necessity of calling witnesses resorted to by Best and Park; the scarcely disguised contest between Counsel, solicitors, and clients; the obviously foredoomed failure of any attempt to establish an *alibi*; the confession of the North Fleet conspirators—all these may have contributed to create the impression that the defence would not be a very long one. It was clear, of course, that Best would have to make a prolonged and serious effort, which could hardly take less than an hour and a half, for the case of his clients was by no means hopeless; but without having read his brief it was impossible to know what witnesses he had other than the Government officials and Lord Yarmouth, who were accommodated with seats on the Bench, and who, we may fairly suppose, did all they could to induce the Court to have their evidence taken that evening. Until Park had spoken, no one could tell that he was really going down headlong into the pit by calling his cloud of tainted witnesses. Nor would it have been necessarily conjectured that Pell, famous as he was for pertinacity and loquacity, would have made such a stubborn and courageous effort. With the confessions of his clients before the jury he might well have followed the example of Mr. Alley, and refrained from 'troubling

his lordship with any witnesses or observations,' or have made a mere appeal *ad misericordiam.*

Reviewing all the circumstances, it seems to me that Lord Ellenborough might have very justly supposed that one o'clock would have finished the speeches of Counsel, and that half an hour would have sufficed to release the official witnesses. He made a miscalculation, but no one will assert that having sat till three, he ought to have gone on any further, or differ from him in saying that, as the evidence would occupy a considerable time, this was the most convenient period for dividing the cause. To those who are convinced that Lord Ellenborough's one object was to procure a conviction at all costs, and by any means, this suggestion will appear as 'insufficient and artificial' as his own reasons. I only make it for the benefit of those who, without prepossession, are desirous of arriving at the truth.

CHAPTER V

THE TRIAL, SECOND DAY: VERDICT AND JUDGMENT

On the reopening of the Court the defendants called their evidence, the witnesses for Lord Cochrane, Cochrane Johnstone, and Butt having priority. Counsel began by putting in the correspondence of Le Marchant and Lord Cochrane—three letters by the former, one by the latter, and a signed statement given to Lord Cochrane by Le Marchant relating to a conversation with De Berenger. Their effect was to place Le Marchant in a very odious light, and to discredit his testimony, for they contradicted his sworn assertion that his evidence was not due to resentment in consequence of being refused a loan of money.

Trial, p. 334.

The Right Honourable Lord Melville[1] was the first witness called. He said that some time before Sir Alexander Cochrane sailed for the North American station he had applied to him for permission to enable De Berenger to accompany him, for the purpose of instructing either a corps to be raised in that part of the world, or the Royal Marines, in the rifle exercise. Witness had explained to Sir Alexander Cochrane that, as far as related to the naval service, he could not agree to the appointment, and he recommended Sir Alexander to apply to the Secretary of State or the Commander-in-Chief, stating that, if they agreed to it, he should have no objection to De Berenger's accompanying him.

p. 340.

Park said that he had intended to call Lord Melville, if

[1] But for the fact that they held the same high office within a few years of one another, it would hardly be necessary to distinguish this nobleman from his father, the famous Dundas, the friend of Pitt, whose dismissal from the position of First Lord and abortive impeachment has already been alluded to.

Serjeant Best had not, and to examine him on these facts, and Lord Ellenborough asked the witness if he had any personal knowledge of De Berenger, to which he replied in the negative.

Colonel Torrens, the secretary to the Commander-in-Chief, remembered an application being made on behalf of De Berenger by Sir Alexander Cochrane, who came to him two or three times to urge the appointment of De Berenger as a light infantry officer on the service in America on which he was about to embark. The question of this application came under the consideration of the Commander-in-Chief's department, and it was rejected. Witness knew nothing personally about De Berenger. Trial, p. 342.

Mr. Goulburn, M.P., Under-Secretary of State for the Colonial Department, said that an application had been made by Sir Alexander Cochrane relative to De Berenger's going abroad with Lord Cochrane. As the application was in writing its contents could not be given orally. Park said they only wished to show a 'connection with the Cochranes without this illicit connection,' to which Lord Ellenborough remarked that no doubt there had been an intimacy and connection, whether for good or ill was the question. Serjeant Best added that this evidence confirmed in terms the statement in the affidavit of Lord Cochrane. p. 344. p. 344.

William King said he was a tinplate worker, and was employed by Lord Cochrane in the making of a new sort of signal lanthorn and lamp, for use in the navy, for which Lord Cochrane had recently obtained a patent. His manufactory was at No. 1 Cock Lane, Snow Hill, and on the 21st of February Lord Cochrane was with him there between ten and eleven in the morning, which was the time he usually came. When his lordship had been there about a quarter of an hour, his servant brought a note and delivered it to him in witness's presence. He immediately opened it and retired into the passage of the manufactory, and then came again into the workshop, and shortly afterwards went away. Lord Ellenborough asked whether he saw Lord Cochrane read the note, to which witness replied that he saw him read it in the passage of the manufactory, and p. 345. p. 346.

that he only remarked, 'Very well, Thomas.' The reading occupied no time.

Trial, p. 347. Mr. Bowering, a clerk in the Adjutant-General's office, said Lord Cochrane's brother, Major Cochrane, was returned as being with the army in the South of France at the beginning of the year. He was returned as 'sick present' on the return extending from December 24th to January 24th. He could not say when that return reached the office.

p. 347. Thomas Dewman said he was a servant of Lord Cochrane's, and had been with the family for about seventeen years. He remembered one morning in February a gentleman, whom he had never seen before or since, coming to Lord Cochrane's house in a hackney-coach. The gentleman first asked where Lord Cochrane was, and he told him that he was gone to Cumberland Street to breakfast, whereupon the gentleman sent him there with a note. Not finding his master there, he brought the note back to the house in Green Street. The gentleman asked if he knew where Lord Cochrane could be found, and he told him that most likely he should find him at Mr. King's, as he had received orders from his lordship, when he went out, to follow him there with a glass globe. The gentleman then asked for the note back again, and said he would add two or three more lines to it. Witness took the note to his lordship at Mr. King's. Lord Cochrane read the note in his presence, and witness left him there. Witness was at that time the only man-servant employed in Green Street, but a former servant, named Isaac Davis, who had now gone to the West Indies with Admiral Fleming, and whom Scarlett said the defence had been unable to find,[1] happened to be in the house that morning. It was a little past ten when the gentleman arrived in the hackney-coach, and witness did not return to Green Street till near two, and could not say whether Lord Cochrane saw the gentle-

p. 351. man when he came back. Lord Ellenborough asked Dewman what Lord Cochrane said or did when he gave him the note, to which Dewman answered, 'He said, "Then I

[1] See *supra*, p. 137.

must return;"' and in reply to further questions witness said that he was acquainted with Major Cochrane, having attended him when he first went into the army.[1]

The patent for the invention of the lamp in question, dated the 20th of February, was admitted by the prosecution. Brougham said that this concluded the case for Lord

Trial, p. 351.

[1] After what has been said already as to Serjeant Best's admission of the fact of De Berenger's coat being red, it is unnecessary to point out the reasons why Dewman was asked no questions as to De Berenger's dress, and why the Counsel abstained from calling Mary Turpin.

Lord Cochrane seems never to have appreciated the difficulty in which his Counsel were placed by the positive evidence of Shilling and Crane, and by the nature of the servants' affidavits, sworn under his own direction on March 22nd. In his speech in the House of Commons, July 5th, 1814, he said:—

Hansard, vol. xxviii. pp. 561–2.

'Early on the morning of the second day of the trial, being informed, to my surprise, of the mode of defence which had been resorted to, I again sent my servants to Guildhall with a note to my solicitors, of which the following is an extract:—

'"I have sent my servants, who, I submit, ought to be examined, in order to prove the appearance of Berenger."

'. . . About half-past seven o'clock on the evening of the last day of the trial a clerk, on the part of my solicitors, called upon me, and the following is a memorandum made by him of the conversation that took place between us in consequence:—

'"I told Lord Cochrane I had just come out of Court to prepare him for the worst result, as the Judge was summing up against him very decidedly, and I delivered him a memorandum of Mr. Brougham, recommending his lordship's being made acquainted with the result to be apprehended; he inquired much about the trial, but particularly what witnesses had been called on his side. I told him Dewman, and a person to prove Major Cochrane's illness, and some others. He inquired if Mary Turpin was called. I answered not. He said Mr. Parkinson *had put his foot in his case*, or that he had *botched his case*, and that it was *cruel in him*. He requested I would tell him he ought to have called her to prove Berenger's dress. I told him his letter was submitted to Counsel, and the measure not approved of by them. He answered, 'Mr. P. *should have done as I instructed him. I am to be the only sufferer, if convicted.*' I also told him that at the time his lordship's letter was received his case was closed.

infra, p. 212.

'"HENRY COLTHURST."'

These passages are apparently the foundation of the statement made in the *Autobiography of a Seaman*, 'So little apparent danger was there of my being declared implicated in this hoax, that even my solicitors had not taken the precaution of summoning my servants to give evidence as to the kind of dress worn by De Berenger.' Yet at p. 456 of the same volume is printed his address to the electors of Westminster of August 10th 1814, in a note to which he says, 'From an item in my solicitors' bill, dated

Vol. ii. p. 362.

Cochrane, and two or three witnesses were called on behalf of Cochrane Johnstone.

Trial, p. 352.

The first of these was Mr. Gabriel Tahourdin, De Berenger's attorney. He said that he had known that defendant for some years, and in May 1813 had introduced him to Cochrane Johnstone, who was desirous of improving some property of his at Paddington by laying it out as a recreation ground. A plan of this was produced, and the witness said that as far back as September De Berenger had nearly completed it, and had drawn up a minute prospectus. In that month Cochrane Johnstone had paid 100*l.* on account of the work done, and in the course of February last witness had repeatedly hinted to Cochrane Johnstone that De Berenger would be glad of a settlement; no price had been stipulated, and on February the 22nd Cochrane Johnstone sent him by hand delivery a letter which he had

pp. 355, 357.

received that day from De Berenger. De Berenger's letter began by complaining of the unreasonable delay of 'Colonel Kennedy' in completing the purchase of the share in an oil patent. 'Had he completed his contract at the price agreed on—namely, 1,500*l.*—I should be liberated from this place, and be able to equip myself for the American expedition, which I do not relinquish, without encroaching on any friend.' With regard to the plans, MS., &c., he suggested 250*l.* as a not unreasonable remuneration. Then there were further references to 'Colonel K.' and the patent, and to the writer's pecuniary embarrassments, terminating in a request for an additional sum of 200*l.* by way of loan. Were this granted 'I should be enabled to proceed immediately to the *Tonnant*, for I still think Lord Cochrane might obtain leave for my going on board, at all events.' A postscript referred to the fact that the writer had received 50*l.* on account. Cochrane Johnstone's letter, apart from other legal business, was with the object of

June 6th, only two days before the trial, I extract the following: "Attending a consultation at Serjeant Best's chambers, when your case was fully considered, and all the Counsel were of opinion that you must be defended jointly with the other defendants; and the Counsel recommended your servants being in attendance on the trial, though they still remained of opinion that neither they nor any other witness ought to be examined on your part."'

infra, p. 212.

inquiring whether Tahourdin had advanced to De Berenger any additional sums on account, besides the 50*l.* mentioned in the postscript, and in it Cochrane Johnstone said he had already written to De Berenger to tell him he would advance him the 200*l.* on his note of hand. In answer to Scarlett, witness said that he had prepared in his office an assignment from De Berenger to Colonel Kennedy of a share of a patent.

Witness's reply to Cochrane Johnstone's letter, dated February 23rd, was then put in, stating that the only advances he had made to De Berenger was a trifle of seven or eight pounds. Lord Ellenborough here interposed, saying that the cover of the letter should be produced, for letters of this sort might be written after their date, and 'one wishes to have some external thing that cannot deceive; there is no post-mark to any of these letters.' Witness 'said he could not charge his memory whether his letter was sent by the post or not.' The defence then put in two receipts under the hand of De Berenger for money paid by Cochrane Johnstone, one for 50*l.*, dated September 20th, 1813, and the others for 200*l.*, dated February 26th, 1814; and also De Berenger's note of hand for 200*l.* to Cochrane Johnstone, of the same date as the last document. The letters received from Cochrane Johnstone, including the one enclosed from De Berenger, had been endorsed by the witness with the date on which they were received. Lord Ellenborough addressed several questions on this point, and finally observed, 'If I received a letter I should endorse the date of my receiving it as authenticating the fact; but I should not put the endorsement of the date upon the enclosure, for I knew nothing of the date, whether it was received on that day or not; the gentlemen of the jury know whether this is the habit of business or not.'

Trial, p. 861.

p. 862.

p. 863.

p. 864.

p. 866

Park now examined the witness on behalf of De Berenger, principally on the point of the latter's handwriting. Shown the Dover letter to Admiral Foley, he swore that in his judgment it was not in De Berenger's handwriting, disguised or not; shown the road book found on De Berenger at

p. 867

Leith, he said some of it appeared more like his handwriting than the other part, but he really did not know what to say, whether the whole of it was written by him or not. He was severely questioned both by Gurney and Lord Ellenborough, but could not be got to give any more definite answer.

Trial, p. 371.

p. 371

A General Campbell gave evidence that in the previous autumn Cochrane Johnstone had shown him the plans and prospectus prepared by De Berenger, and an architect named Hopper, who knew the premises at Paddington, and had seen De Berenger's plans, said that from 200*l.* to 300*l.* would not be excessive remuneration for them.

p. 407.

This closed the case of Lord Cochrane, Cochrane Johnstone, and Butt; and Park proceeded to call Lord Yarmouth on behalf of De Berenger.

p. 372.

As Lieutenant-Colonel Commandant of the Duke of Cumberland's sharp-shooters he had known De Berenger since the beginning of 1811. The latter was a non-commissioned officer, acting as adjutant of the corps, and in that capacity the witness had received a great many letters from him, and had seen him write occasionally. On being handed the Dover letter and asked if he should have believed it to be De Berenger's handwriting, he replied, 'Certainly not.' On some day in January De Berenger had mentioned to him that he had very nearly arranged to go out to drill the crew and marines on board the *Tonnant*. Witness thought he mentioned it in a way to suggest that he wished some little additional interest, and so he got rid of the matter. In cross-examination Lord Yarmouth said the writing of the Dover letter was larger than De Berenger's usual hand. He identified another letter shown him as having been received on March the 19th. He would not swear either way as to the handwriting of the road book. In further answer to Park he said that in the Dover letter the capital R., the initial before Du Bourg, alone reminded him of De Berenger's writing. He was then questioned, apparently by Lord Ellenborough, as to the uniform of the corps, which he described as a green waistcoat (not a jacket) very like the

p. 376.

light horse uniform, with a crimson collar; the proper shade was a deep bottle-green. The great coat was a waistcoat, with black fur round it, and consequently no crimson collar.[1] The members of his corps wore no such decoration as the star which had been produced in evidence. Supposing a gentleman had appeared before him in an aide-de-camp's uniform with the star upon his breast and the other ornament appendant, he should certainly not consider him to be in the dress of his corps of sharp-shooters; and should any member of his corps present himself so attired he should consider it a very impertinent thing. A juryman asked his lordship whether it would have been anything extraordinary if De Berenger had appeared before him in the uniform of his corps, and his lordship replied no, 'it would have been more military that he should do so, though I never exacted it.' Trial, p. 377.

Captain Sir John Poo Beresford[2] swore that he had interested himself in trying to get permission for De Berenger to go on board the *Tonnant*, and had subsequently met him in company at Mr. Cochrane Johnstone's house. James Stokes, a clerk of Mr. Tahourdin's, swore that he did not believe the Dover letter was in the handwriting of De Berenger, and the defence came to the witnesses called to prove the *alibi*. p. 377. p. 378.

As it is now admitted that this evidence, whether wilful perjury or not, was false, and that De Berenger was not in London

[1] This is the verbatim report:—

'*Q.* What is the uniform of your corps?

'*A.* The uniform is, the waistcoat green, with a crimson cape.

'*Q.* A bottle-green, is it not?

'*A.* Some have got it a little darker than others, but it should be a deep bottle-green with a crimson collar; the great coat is a waistcoat with black fur round it, consequently no crimson collar.

'*Q.* The body in your uniform is not red?

'*A.* It is deep bottle-green.

'*A Juryman.* A jacket or coat?

'*A.* It is a waistcoat, very like the light horse uniform.'

[2] Brother to the Field Marshal, and a very distinguished sailor, who had taken part in the action at the Basque Roads. An amusing account of him will be found in a recent work, *Naval Administration, 1827–92*, by the late Sir J. H. Briggs.

on the Sunday, but left for Dover on the Saturday night, I do not propose to set it out at any length. As in most untruthful *alibis*, the story was arrived at by transferring events that had actually happened on one day to another. The evidence occupies more than fifty pages, and is of importance for the very prejudicial effect it must have produced upon the minds both of the Judge and the jury. They had seen on the previous day De Berenger identified with Du Bourg by witness after witness, and they were now called upon to hear absolutely contradictory evidence of a most unsatisfactory nature which went to pieces on cross-examination. The effect so produced must have been highly damaging, not only to De Berenger, but to his co-defendants, whom it must have been difficult to dissociate entirely from this defence, and who were equally interested with him in breaking down the proof of his identity with Du Bourg.

Trial, pp. 379–481.

William Smith and his wife, De Berenger's servants at his lodgings, were the first of these witnesses. They agreed that he slept at home on the night of Saturday, the 19th, that he went out about nine on Sunday morning, returned at eleven, and went out again almost immediately; then he returned and stayed in till about four o'clock in the afternoon, when he went out again and did not return till eleven. He slept at home, but went out before breakfast on Monday, and was let in about midday. They were both severely cross-examined, but they held to their story. Smith was shown a letter (presumably the letter of the 19th March; no evidence was given as to its contents): he said he had it written to Lord Yarmouth out of his own head, without being furnished with a draft by any one. He remembered receiving a fifty-pound note from De Berenger on the 27th of February, the day he went away, and changing it with Mr. Seeks. He was pressed as to whether De Berenger had not told him that he had dined with Cochrane Johnstone on the 21st, but he denied it. He saw a strange black coat in his master's room after his return on the 21st, but took no particular notice of it, as to whether it fitted his master or no.[1] He swore that he drew his affidavit himself. He had not seen Lord Cochrane nor Mr.

pp. 379, 392.

p. 385

Cf. pp. 248–250, *supra*,

p. 122, *supra*.

Trial, p. 387.

p. 388.

[1] Lord Cochrane was one of the tallest men in the navy, 6 ft. 2 in.; De Berenger, slightly above middle height.

Cochrane Johnstone upon that business. On the 7th or 8th of March he went to inform Mr. Tahourdin of his master's absence. He had sworn his affidavit on the 24th of March, but he had drawn it out before then, without any assistance from any one, for the vindication of his master's character. He subsequently took it to Mr. Cochrane Johnstone that it might be published. Both the Smiths spoke to there being a bundle in De Berenger's room on his return on the Monday; and not without a great deal of pressing, and being reminded of what she had sworn in her affidavit, the woman said that she saw a green uniform in it.[1] *supra*, p. 49.

Lord Ellenborough: What did you see besides the grey coat in the bundle?—*A.* I saw nothing but that. Trial, p. 398.

Lord Ellenborough: Recollect yourself, because you have sworn you saw a green uniform.—*A.* There might be a green uniform.

Q. Was there or was there not?—*A.* Yes, there was a green uniform.

Q. Was it in the bundle or not?—*A.* Yes, it was in the bundle.

She also stated, in answer to Bolland, that there was nothing extraordinary in her master going out in his green drill dress; he was in the habit of going out in it and returning in it. She could not speak positively as to whether he wore whiskers when she was in his service.

Then came John M'Guire, an ostler at the Cross Keys Yard, Chelsea; he remembered seeing De Berenger on Sunday, the 20th of February, standing at the stable yard gateway at a quarter past six in the evening. De Berenger asked him whether the coach was gone, and witness answered that the six o'clock coach was gone; but the seven would be ready in three-quarters of an hour, whereupon De Berenger said he could not wait for the seven o'clock, but turned round and took his way to p. 400.

[1] It will be remembered that her affidavit was sworn on the 24th of March before De Berenger's arrest, and in support of a story differing in the essential question of the colour of the uniform from the one put forward by the defence at the trial. The questions were of course merely directed to the witness's credit.

Trial, p. 409. London. Mrs. M'Guire said that her husband had mentioned to her when he came home on the 20th of February, in the evening, that he had that day seen Mr. De Berenger in his master's yard, and that he wondered how he came there. M'Guire stuck to his story in cross-examination, but his answers could scarcely have inspired confidence in the tale.

p. 410. A man named Henry Tragear came forward and swore he remembered being at a Mr. Donithorne's house in Westminster in February last. He and his wife were living and sleeping there, having given up their own house in Holborn. They had moved to Mr. Donithorne's on the 17th of February, and were there still. He particularly remembered seeing De Berenger in this house on Sunday, the 20th, twice on the same day. The first time was between nine and ten in the morning, and the second

p. 420. between eight and nine in the evening. Mrs. Tragear corroborated her husband, but their united testimony, even without the stiff cross-examination to which they were subjected, was not of a nature to impress the hearers favourably. Tragear had had a chequered business experience, and had not unfrequently acted as bail,[1] though he swore he had not been 'in the habit' of doing so. Lord Ellenborough said, 'You may go away, and let me advise

p. 419. you not to be either a bail or a witness again.'

p. 425. Last came Isaac Donithorne himself. He was a cabinet maker and was well acquainted with De Berenger, who had more than once given him designs for furniture. De

[1] Students of Dickens may remember how Mr. Pickwick's attention was attracted outside of the Judge's Chambers in Serjeants' Inn by 'three or four men of shabby-genteel appearance, who touched their hats to many of the attorneys who passed, and seemed to have some business there, the nature of which Mr. Pickwick could not divine.' It was explained to him that these men were bails. 'Yes, my dear sir, half-a-dozen of 'em here. Bail you to any amount, and only charge half-a-crown.' 'What! am I to understand that these men earn a livelihood by waiting about here to perjure themselves before the judges of the land, at the rate of half-a-crown a crime,' exclaimed Mr. Pickwick, aghast at the disclosure. 'Why, I don't exactly know about perjuring, my dear sir,' replied Mr. Perker. 'Harsh word, my dear sir, very harsh word indeed. It's a legal fiction, my dear sir, nothing more.'

Berenger came, he said, to see him on the morning of Sunday, February the 20th, to look over the grounds and see some furniture which witness was designing for Mr. Cochrane Johnstone, and his visit in the evening was on the same business; but Donithorne's evidence on this point was by no means consistent with the story told by the Tragears. In cross-examination the witness said that he had employed Tahourdin as his attorney to issue some writs at the desire of Mr. Cochrane Johnstone. These writs amounted to 135 in number. 'Of what kind?' inquired Lord Ellenborough, to which Park answered, '*Qui tam*[1] actions, and that was the reason I did not propose calling him.' Witness said he supposed that Mr. Cochrane Johnstone was to pay the costs of these actions. *supra*, p. 48.

Mr. Park said that he called no more witnesses, and could not prove where De Berenger dined that Sunday. Gurney said he wished to recall Mr. Murray to put one question to him in contradiction to Smith.[2] Lord Ellenborough thereupon said, 'If that question occasions a reply that will throw us into the night; if you think this case of *alibi* requires a serious answer you will, of course, give it, but I think you would disparage the jury by doing so.' Trial, p. 431.

Gurney accepted this intimation, and rose to reply on p. 432.

[1] 'More usually, these forfeitures created by statute are given at large to any common informer, or, in other words, to any such person or persons as will sue for the same; and hence such actions are called popular actions, because they are given to the people in general. Sometimes one part is given to the King, to the poor, or to some public use, and the other part to the informer or prosecutor; and then the suit is called a *qui tam* action, because it is brought by a person "*qui tam pro domino rege quam pro se ipso in hac parte sequitur.*" If the King, therefore, himself commences this suit he shall have the whole forfeiture. But if any one hath begun a *qui tam* or popular action, no other person can pursue it.' Blackstone's *Commentaries*, vol. iii. p. 160 (12th edition).

[2] Presumably in reference to this.

'*Q.* Now attend to this question: Have you not acknowledged that your master slept from home that night? p. 384.

'*A.* Never.

'*Q.* Have you not acknowledged it to Mr. Murray?

'*A.* Never.

'*Q.* I give you notice he is here.

'*A.* I know he is.'

Trial, p. 432.

behalf of the prosecution. First of all, he dealt lightly with the North Fleet plot; if there had been two separate unconnected conspiracies, as Serjeant Pell urged, then miracles had not ceased, for unless the jury could believe that a most extraordinary miracle had occurred it was quite impossible to believe that there were two plots; taking the whole of that part of the case together, it must be impossible for them to entertain the smallest doubt that M'Rae, Holloway, and the rest were parties to the common fraud.

Coming to the main plot, the learned Counsel addressed himself to the various arguments of Serjeant Best. First, it was contended that the accounts put in by the prosecution proved that Lord Cochrane, Cochrane Johnstone, and Butt had been large dealers in Omnium and Consols, and had had large balances previous to the 21st of February, and that because they had had larger balances on a day before that date there could have been no inducement to commit this crime on the 21st itself. But let the jury consider the amount of their balance on that day, a sum which, reduced to Consols, amounted to 1,600,000*l*., on which the fluctuation of one-eighth meant a gain or loss of 2,000*l*. Though they had been both buying and selling, yet their purchases had been much larger than their sales, and their attempts to purchase larger than their actual purchases. On that Monday morning all the three had this immense quantity of stock upon their hands; they had no means of getting rid of it but at a great loss. They had been buying to keep up the market, and then, when this fraudulent news came, all this stock is sold at a profit of 10,000*l*. But had it been sold without any profit at all, still the getting out without a great loss was to them a great gain. The jury would remember how, a month after this transaction, when news came of the rupture of the negotiation at Chatillon, the premium on Omnium fell from 28 to 12; had such news come on the 21st, instead of the false news, the loss of those three defendants would have been upwards of 160,000*l*. They were so involved that ruin stared them in the face.

Next, as to the identity of De Berenger. Upon this subject they had had for the last two hours evidence which had nauseated every man in Court—the evidence of the *alibi*, which no man living could believe, in which no two witnesses agreed, and in which there was contradiction after contradiction from every one of them. This was a case perfectly unassailable by *alibi*; even if his countenance had not been identified by a single witness the movement of the staff officer had been traced stage by stage until he was landed at Lord Cochrane's house as De Berenger. 'I take him up at Dover as I would a bale of goods; I have delivered him from hand to hand from Dover to London; I have delivered him into the house of Lord Cochrane; and I have Lord Cochrane's receipt acknowledging the delivery.' As to the identification by the witnesses in Court, 'many, many guilty men have forfeited their lives upon infinitely less evidence than had been given as to the person of De Berenger.'

Trial, p. 437.

p. 488.

After treating of the handwriting of the Dover letter, Gurney dealt with the question of Lord Cochrane's affidavit. They had been asked if such a man was capable of making a false affidavit, but he called upon the jury to consider the desperate difficulty in which the noble lord was placed. He was so deeply involved in these speculations that there was no way of getting out of them but by this fraud, and having got out of them in this way he discovered that he was involved still deeper when he found the great agent of the plot traced into his house, and traced there in the dress in which he had perpetrated the fraud. Witnesses had been called to confirm the only portions of the affidavit which wanted no confirmation, the applications to the Admiralty, the War Office, and the Colonial Office on behalf of De Berenger, but the defence had left him entirely without confirmation upon the most vital part, the dress worn at the time of his coming to the house and during the interview with Lord Cochrane—Lord Cochrane swore it was green—the prosecution had proved it was red.

Serjeant Best had suggested that he might easily have confounded the green in which he ordinarily saw him for the

Trial, p. 441.

red in which he saw him on that day only. 'Now,' said Gurney, 'if I wanted to show how it was impossible for a man to make a mistake as to the colour of the coat in which he had seen another, I should select the instance in which he had seen that other in a peculiar dress but for once.' There was more than a mere red coat to account for; it was an aide-de-camp's uniform, and there was the star and the medallion. If Lord Cochrane was not in the secret of De Berenger's dress he must have had some curiosity on the subject. And yet Lord Cochrane, after seeing De Berenger in this garb, had sworn that the uniform was green, and that he had lent him a black coat because he could not wait on Lord Yarmouth in that green uniform, which was the uniform of his corps, and in which Lord Yarmouth had told them it would have been more military for him to have waited on him than in any other dress. Lord Cochrane's servant, who carried the note, had been called, but when he was in the box the defence had not ventured to ask him what was the dress of De Berenger. Another man-servant, who might have corroborated, had been suffered to go abroad, and the maid-servant who was in the house at the time was not called.[1]

Serjeant Best had laid great stress on the fact that it was Lord Cochrane who furnished the Stock Exchange with the name of De Berenger; but he did so on the 11th of March, twelve days after De Berenger had left London, and when Lord Cochrane had no more doubt that he was out of the country than that he was himself in existence.

Lastly, there was the mode of accounting for the bank notes found in De Berenger's letter-case; this extraordinary transaction of the drawings of a design for improving the ground behind Mr. Cochrane Johnstone's house

[1] The obvious answer to this was that Best had admitted the coat to be red, and that so there was an end of the dispute as to the colour and no necessity to call the servants as to it. Brougham does not appear to have

p. 442.

appreciated this, for he merely interposed, saying, 'Davis had left,' exposing himself to Gurney's retort, 'Why was he suffered to go away?' By Brougham's failure to insist on the reasons which rendered the evidence of the servants unnecessary much of the effect of Best's ingenious speech was lost.

in Alsop's buildings. The work was done in September, and the Tahourdin-Berenger-Cochrane-Johnstone correspondence showed the commencement of a sudden fit of money-paying and money-taking on the 22*nd of February*. The jury had had to listen to a series of extraordinary coincidences which the defendants wished them to believe were accidental. To these must now be added acknowledged payment of money by Cochrane Johnstone to De Berenger on the very day after which the latter had rendered his three co-defendants the important service of raising the funds of which they had so profitably availed themselves.

A payment of 400*l.* to De Berenger is made on the 26th of February, partly pay, partly loan. But why did Mr. Cochrane Johnstone or Mr. Butt—for they were one and the same—take so much trouble and go through so much circuity in shifting and changing the bank notes, changing and changing again to procure a vast number of small notes for De Berenger, to enable him to take this long journey to the north? It was because one-pound notes are not traced so easily as notes for one hundred pounds. Yet the device, when detected, makes the fact still stronger. It was proved that over a hundred of these notes had been found in De Berenger's desk at Leith; a strong presumption that he had had the whole four hundred. Besides this, they had traced to him a 40*l.* note changed at Sunderland, and a 50*l.* note given to his servant Smith, both of which had been traced up to Butt. Were these turnings and windings to be explained away by such a flimsy device as these manufactured papers? And, moreover, this 400*l.*, which was shown to come out of the hands of Cochrane Johnstone and Butt after the 24th of February, had also been shown to have come originally out of the hands of Lord Cochrane himself on a prior day.

Gurney concluded by saying that it seemed to him absolutely impossible to doubt respecting the guilt of the several defendants. De Berenger was Du Bourg. When De Berenger was Du Bourg the rest all followed. He was the agent of others unquestionably; he was not himself the principal. There had been a mass of perjury exhibited

to-day to extricate him, and consequently his employers. Like all falsehoods, when detected it only served to make conviction more clear and more certain.

The penultimate stage of the trial, Lord Ellenborough's summing-up, had now been reached. On this summing-up so much criticism has been made, and so much misrepresentation has been indulged in, that I have been compelled, lengthy as it is, to print it verbatim from the shorthand report. In this form, however, it is out of all proportion to the narrative previously given of the trial, and in order not to interrupt the story I only give here a brief abstract of it.

App. B, p. 411, *infra*.

Trial, p. 448.

The learned Judge first of all defined the offence of conspiracy as a wicked combination of individuals to effect some public or private injury or mischief. This common purpose of mischief might be collected from the acting and conduct of the parties, and if this showed that they were influenced by one common purpose and aimed at the production of the same end and effect, it was unnecessary to show that they had ever met in council together. The question, therefore, on the evidence would be whether the case was brought satisfactorily home to a great number if not to all the defendants. On the first two counts, which alleged facts and motives in which all the parties could not be supposed to be joined, there should be an acquittal. These counts stated that every one of the defendants knew that a gain was to be acquired by Mr. Cochrane Johnstone, Lord Cochrane, and Mr. Butt, and it did not appear from the evidence that Holloway and his confederates knew the relation in which these three defendants stood to the funds, or their interest and speculation therein.

pp. 450, 531.

It had been admitted that Holloway, Lyte, and Sandom had been concerned in the conspiracy, but it was alleged by their Counsel that it was a distinct one, and that the two could not be united so as to convict all the defendants as guilty of one entire individual conspiracy. Were the jury satisfied that they were all conspiring to effectuate the same purpose, with the same means, at the same time? The end had

been effected in both instances by the adoption of military disguises: there was, in each case, the assumption of the character of officers, and the communication of false intelligence respecting good news which was to accelerate peace. The jury would further consider whether there was not a link or connection between the two plots through M'Rae, and perhaps through Cochrane Johnstone. They had heard the letters read containing Mr. Cochrane Johnstone's remarkable offer of the joint subscription of 3,000*l.* in aid of the 10,000*l.* required by M'Rae. They would judge whether they were pregnant of the contrivance and device of drawing public attention to M'Rae as the sole perpetrator of the fraud.

The first question would be, whether De Berenger was the man who appeared at Dover and thence proceeded to London and to Lord Cochrane's house; and here a good deal of observation had been made as to the handwriting of the letter sent to Admiral Foley. This letter was in an artificial, stiff hand, as contrasted with the ordinary character of De Berenger's writing. It was not impossible the letter had been brought down ready written and directed from London, and that pen and ink had been called for merely to go through the appearance of writing. In any case the letter produced before the jury was the letter sent to the Admiral. The jury would not, he thought, have any doubt that De Berenger was the man who appeared under the name of Du Bourg. If the evidence produced of identity was not sufficient to establish this point the learned Judge said he was at a loss to say by what description and quantity of testimony such a point could be satisfactorily made out in the course of a trial. As to the *alibi*, he could not, after hearing the evidence for the prosecution, foresee how it would be satisfactorily made out, but he had believed it would be attempted by better evidence than that which had been adduced. After characterising very severely some of the witnesses to it, he referred to Donithorne as having been employed by Cochrane Johnstone both as a cabinet-maker and to bring

Trial, p. 457.

a great number of penal actions for him; 'at every turn of the case he doubles in upon us.'

Lord Ellenborough then began his statement of the evidence. Over the witnesses to the Dover part of the case we need not linger; whether they were absolutely correct in their testimony is of little moment, for we know on his own confession that De Berenger was the man, and, as we have seen, the learned Judge did not hesitate to express his opinion on this point.

Mr. Lavie had given evidence as to the handwriting not only of the Dover letter, but of the papers found in De Berenger's desk, and commenting on it Lord Ellenborough said that much less than this was what was received every day in proof of bonds, notes, and bills of exchange.

Trial, pp. 477, 488. *infra*, pp. 432, 441. 'Autobiography,' vol. ii. p. 374.

It will be seen that in reading Crane's evidence to the jury Lord Ellenborough quoted him as saying, 'The portmanteau was a small black leather one,' without adding that Crane had said that it was 'big enough to wrap a coat in.' This alleged suppression was one of the charges afterwards brought against him. No credit, however, is given him for the fact that at another place, in referring to the portmanteau in which Solomon's customer took away the uniform, he refers to it as evidently being the one sworn to by Crane.

Letter to LordEllenborough, p. 17. Trial, p. 478. *infra*, p. 433. Letter to LordEllenborough, pp. 97–8.

But it was in connection with the next witness, Odell—the man who fished up the scarlet uniform from the Thames—that his language was most severely commented on by Lord Cochrane. 'You have before had the animal hunted home, and now you have his skin, found and produced as it was taken out of the river, cut to pieces; the sinking it could have been with no other view than that of suppressing this piece of evidence, and preventing the discovery which it might otherwise occasion. This makes it all the more material to attend to the stripping off the clothes which took place in Lord Cochrane's house. *When he pulled off his great coat there, what must he have displayed to his lordship's eyes, if present at the time? Did he display the uniform of the rifle corps?*' Forcible the language undoubtedly was, but it is difficult to see in what respects it departs from the evidence.

Lord Cochrane's affidavit thus became the next subject,

and Lord Ellenborough directed the jury that when evidence is given of what a party has said or sworn, all of it is evidence (subject to their consideration as to its truth), coming as it does in one entire form; but it was for them to judge to what parts of the whole they could give their credit, and also whether that part which appeared to confirm and fix the charge did not outweigh that which contained the exculpation. It was material, he told them, to observe that the affidavit first introduced the name of De Berenger into any public document; whether it was known privately before that they had no evidence. The date of the affidavit was March 11th; De Berenger finally disappeared on February 27th. He seems to have very soon got to Sunderland, and might on the 11th of March be reasonably supposed to have been out of the kingdom. Leaving the affidavit for a moment, the Judge turned to the bank notes found in De Berenger's writing-desk at his apprehension. The principal part of these were the produce of a draft of 470*l.* odd, which had originally been laid down before, and paid to Lord Cochrane; it had afterwards got into the hands of Mr. Cochrane Johnstone and Mr. Butt, for there appeared to be such a communication between the parties that you could not say from whom ultimately it proceeded; but it had been in some sort in the hands of all, and the produce of this cheque originally paid to Lord Cochrane is found in the desk of this man.

Reverting to the affidavit, the Judge proceeded to read it through and comment on it. With regard to the specification to the patent, he said that no doubt the patent existed, and that it was a true transaction; but whether it was used as a colour and to draw off their attention from other matters was another point. On the morning drive to the city with Butt and Cochrane Johnstone he said that thus these three gentlemen, who had so much to do on that day, were brought together, and had an opportunity of communicating together at least at this time. Gurney had remarked apropos of the note delivered at King's manufactory that the name that Lord Cochrane said he could not read would not in all probability have

been written at the bottom, for De Berenger had finished the note, and when it was sent back to him there was still space enough for him to write something more. This Lord Ellenborough referred to as a 'very pointed observation,' and said that it could not be from its being very crowded at the bottom that Lord Cochrane could not read the signature, unless it was that De Berenger had not signed any name till quite the last, and after he had written the addition. With regard to the statement that Lord Cochrane hastened back to hear what had befallen his brother, the learned Judge said that this anxiety, if true, was a very good motive for returning; but it was remarkable that he should not have disclosed his motive to the old family servant who brought the note. It certainly appeared from the returns that this brother had been wounded, or was upon the sick list; but it was not in evidence that Lord Cochrane had then actually received any communication upon the subject, or that he then knew him to be so. From the acquaintance which Lord Cochrane had with De Berenger, no doubt some application had been made to get the latter the appointment of which they had heard,[1] and Lord Cochrane must have been, one would suppose, familiar with his handwriting, and if so he could have had no doubt who was the person from whom he received this note, and whom he was to meet when he should get home. In reading the account of the interview contained in the affidavit, when he reached the point where De Berenger was alleged to have said that he could not go to Lord Yarmouth's or any other of his friends 'in this dress,' Lord Ellenborough remarked:—

Trial, p. 484, *infra*, p. 488.

What is this dress that Lord Cochrane represents as then belonging to him? a green dress? Had he a green dress? He must have had that dress with him, whatever it was, in which he had come in the coach: he says that would excite suspicion. Why, if he had really a green uniform that would not have

Letter to Lord Ellenborough, p. 51.

[1] One of the points on which Lord Ellenborough is said to have misrepresented the evidence consists in his saying, with regard to this, 'There is no doubt that Sir Alexander Cochrane had, *on some application of Mr. Cochrane Johnstone or Lord Cochrane*, applied for him.'

excited observation or suspicion; it was the very uniform he ought to have worn; but if it was that in which he had got out of the coach—and it certainly does not appear that he had any means of shifting himself—if he had on an aide-de-camp's uniform with a star, and so presented himself to Lord Cochrane, how could Lord Cochrane reconcile it to the duties he owed to society and to Government, and to his character as a gentleman and an officer, to give him the means of exchanging it? It must be put on for some dishonest purpose; this red coat and star and all this equipment must have appeared most extraordinary, and must have struck Lord Cochrane most forcibly if he was not aware of the purpose for which it was used. . . . If De Berenger put that uniform in a towel he must have pulled it off his back, for it was on his back before, and then Lord Cochrane, one would think, must have seen him do it. What business had this man with a red aide-de-camp's uniform? He had no business to wear any such garb; he was almost as much out of his proper character as I should be if I appeared in the particular dress and professional habit of an officer or a clergyman.

Trial, p. 485, *infra*, p. 488; *cf. supra*, p. 170.

It was for the jury to say whether it was possible that Lord Cochrane should not know that a man coming so disguised and so habited, if he appeared before him so habited, came upon some dishonest errand, and whether it was conceivable that he should present himself to a person who did not know what that dishonest errand was. 'If he actually appeared to Lord Cochrane stripped of his great coat, and with that red coat and aide-de-camp's uniform, star and order, which have been represented to you, he appeared before him rather in the habit of a mountebank than in his proper uniform of a sharp-shooter.' Did De Berenger wear a green uniform, as was asserted in the affidavit? If he did, what true or probable reason existed for the change? The unfitness of appearing in it before his commanding officer, Lord Yarmouth, is negatived by Lord Yarmouth himself. Supposing him to have appeared disguised, it was the conduct of an accomplice to assist him in getting rid of the dress in which, if all the witnesses were not speaking falsely, he had been committing this offence. To let him pull off at his house the dress which

infra, p. 489.

had been worn down to the moment of his entering it—the star, the red coat, and appendant order of Masonry—seemed inconsistent with the conduct of an innocent and honest man, for if he appeared in such an habit he must have appeared to any rational person fully blazoned in the costume of that or some other crime which was to be affected under an assumed dress and by means of fraud and imposition.

Trial, p. 487, *infra*, p. 439.

Having done with the affidavit, Lord Ellenborough then read to the jury the evidence of Solomons, who sold the dress, and of the Davidsons; and having gone through the minor or North Fleet plot, he came to the financial part of the case, on which, however, he did not dwell with anything like the minuteness which characterised his treatment of the affidavit. The substance, he said, of the evidence of the different brokers came to this, that Lord Cochrane, Cochrane Johnstone, and Butt had been dealing in the funds with a view to this particular day; for a length of time they all had their hands full of Omnium and Consols, and, the Omnium having obtained a price which would allow of a profit, all was sold, and the object appeared to have been as much to raise the price a little, so as to get out without present loss, as to gain a profit.

The brokers proved that these defendants were both buyers and sellers. 'The persons who were interested to prevent a depression must feed the market occasionally as buyers, I should imagine, though I am not very conversant in such things.' From the tabulated account put in by Baily of their speculations from the 8th to the 21st of February, Mr. Cochrane Johnstone at any rate appeared to have had on previous occasions a larger balance than he had on the 21st of February; 'but,' said Lord Ellenborough, 'it appears as if they not only were speculating on what they were buying, but were speculating to such an amount that unless they got rid of it every one of them might be ruined, and they had determined, it should seem, on getting a profit of about 1 per cent. to sell the whole.' He then stated to the jury the total balances, sales, and profits of the three defendants as contained in the

infra, p. 449.

p. 500, *infra*, p. 449.

infra, p. 450.

tabulated account and in Baily's evidence. Baily had said that he should think the accounts were time bargains, from the magnitude of the sums; 'but,' added his lordship, 'though the gain which these parties made might not be a legitimate gain arising on legitimate bargains, the evil of this to the fair dealer is palpable, and the argument of its invalidity is a sword with a double edge; its operation, at any rate, is to cut very deeply into the interests of innocent dealers in the funds.'

Trial, p. 502, *infra*, p. 451.

On the evidence of Steers, broker to the Accountant-General, the Judge remarked that the difference in Consols between 71⅛ and 70 seemed to have been occasioned by the fraud, and as to Lord Cochrane's observation to Wright, the printer, that he had given the Stock Exchange Committee the clue (to De Berenger), he said that this was true, but it would have been very ineffectual if De Berenger had carried away his own person previous to that; it was by accident that he was found at Leith.

p. 503, *infra*, p. 451.

With regard to Le Marchant, a great deal of what he said was no evidence against any one but De Berenger: Le Marchant had done himself no credit, and the Government might do well in keeping him at home. He had detailed to them various declarations of De Berenger relative to his dealings with the Cochranes, but the jury would remember that the declarations of persons are evidence only against the parties themselves who make them, and do not prove the fact as against anybody else.

Lord Ellenborough then read to the jury without comment the evidence of Mr. Murray, of Carling, the servant of Mr. Cochrane Johnstone, of Broochooft, the clerk to the Marshal of the King's Bench, and of Wood, the messenger. He passed rapidly through the testimony of the witnesses as to the cheques and notes, remarking that the attempt to prove that Fearn had given Butt a cheque on the 5th[1] of February had come to nothing. The evidence on the cheque for 470*l.* 19*s.* 4*d.* showed that it was drawn for Lord Cochrane, and was in the first instance applied for

pp. 508 *et seq. infra*, pp. 456–459.

[1] It is so printed, but the correct date is given at p. 229 of the *Trial* as the 10th of February.

his benefit, for 50*l.* of it went to his coal merchant, and the other notes [1] appeared to have come to him or to Mr. Butt, and the produce was afterwards found at a very critical period in the hands of De Berenger, seized after he had gone from London. The 40*l.* and 50*l.* notes, part of the cheque for 98*l.* 2*s.* 6*d.* paid to Butt, had also both been fixed by the prosecution upon De Berenger.

As to the witnesses for the defence, Lord Ellenborough read without comment the evidence of Lord Melville, Colonel Torrens, Mr. Goulburn, and Mr. Bowering; nor did he dwell on that of King, the tin-plate worker, and Dewman, the footman. With the evidence of Tahourdin he dealt very differently. That witness had said that he had made repeated applications to Mr. Johnstone in a delicate way to pay De Berenger, and he received a letter from the former on the 22nd of February. This, said his lordship, was a very remarkable time, immediately after the transaction on the 21st; if the gentleman knew anything of De Berenger's conduct on the previous day it might deserve consideration whether that was the most likely time, in point of delicacy, to have made the application. As to the letters of the 22nd of February, the circumstance of Tahourdin having dated the letter of De Berenger enclosed in that of Cochrane Johnstone to himself, did not appear very usual in the course of business. These letters showed other transactions between them. Whether they were pretended or not, or if existing, then artificially brought forward or not, might be a question, but the letters certainly were dated at a most critical time—namely, on the 22nd of February. A great deal of business was introduced into these letters, so much almost as to induce one to think there was an artificial introduction of business to give the appearance of reality to the letters. Mr. Tahourdin had sworn that there were

Trial, p. 517, *infra*, p. 461.

[1] I have observed (p. 142, *supra*) on the fact that Best made no attempt to explain how the produce of the 200*l.* note found its way from Lord Cochrane through Butt to De Berenger. Gurney in his reply, whether intentionally or not, refrained from commenting on this omission, and Lord Ellenborough likewise makes no allusion to it, though Lord Cochrane afterwards admitted it was one of the weakest points in his defence (*infra*, p. 232).

such transactions at that period, but one could not help recollecting that he appeared to have been in communication with the last two witnesses, Donithorne and Tragear.

Then there came the evidence of General Campbell, Lord Yarmouth, Sir John Beresford, and Stokes, Tahourdin's clerk. On this the Judge offered no observations. Last of all were the witnesses to the *alibi*, and as to them Lord Ellenborough said little, but the view he took of them (already shown clearly in the questions which he had put from the Bench, and in his statement at the beginning of the summing-up) may be indicated by his remark on the wonder expressed by M'Guire at seeing De Berenger outside the Rules of the Bench: 'How this should have excited the curiosity of this man one cannot well conceive, but one cannot comment upon that which one cannot read and believe.'

See p. 162, *supra*.

Lord Ellenborough concluded by telling the jury to consider upon the whole of the evidence whether these several parties were connected in one common plan, and were using their several endeavours and means to raise the funds for corrupt advantage by false contrivances and the circulation of false intelligence. In answer to a juryman, he said the question was whether they were guilty or not guilty of a conspiracy, which was a crime that must be committed by more than one.

The jury retired at ten minutes after six, and were absent two hours and a half. On their return they found all the defendants guilty. In an ordinary case sentence would have been pronounced at once, or at most reserved until the following morning. But this being a misdemeanour removed into the King's Bench, the analogies of civil procedure to a certain extent prevailed. It was competent for the defendants to move for a new trial at any period up to and within the first four days of the next term; and if no such application were made, or if it were refused, sentence would only be pronounced by the full Court after the Judge's notes had been read to them, previous to which it was open to any of the defendants to move in arrest of judgment, as in an ordinary criminal trial.

Trial, p. 532.

On the following Tuesday, June the 14th, Lord Cochrane appeared in person before the full Court of King's Bench, consisting of Lord Ellenborough and Justices Le Blanc, Bayley, and Dampier, and asked that there should be a revision of the proceedings, and that a new trial should take place, at least as far as he was concerned. It had been his misfortune, he said, to suffer from an intimacy, or rather an acquaintance, with men over whose conduct he had no control whatever. Lord Ellenborough interposed by saying that they could not hear him, unless all the parties were present in Court; it was the rule, and they had acted on it that very morning. Lord Cochrane asserted that he held in his hands affidavits which could prove his innocence, but Lord Ellenborough said they could not forego the regular practice of the Court. They could not do it on the application of Counsel, and no more could they do it upon his personal application. If they were to adopt a different rule from the one they had acted on that very day[1] it might properly be said that there was one law for the rich and another for the poor. And Mr. Justice Dampier added, 'By the rules of the Court it cannot be; your lordship has been informed of the practice of the Court, and from that practice the Court has no power to depart.'

Lord Cochrane, however, succeeded in stating that before the late trial, so conscious was he of his innocence, he did not think it necessary to instruct Counsel, as several gentlemen in Court knew. He had never read over the brief on the subject till after the trial, when he found a very gross error had crept into it with regard to the dress of the stranger who called at his house; and his servant was in consequence represented as having admitted that he was dressed in a red coat. The fact was that, being questioned as to the colour of the coat, he stated that he appeared to be an army officer, to which he very naturally attached the idea of a red coat, for the servants did not see it.

[1] In the case of Rex *v.* Askew. Maule and Selwyn, p. 9, *infra*, p. 318.

On Monday, the 20th of June, Gurney moved for judgment before the Court of King's Bench, constituted as on the preceding occasion. De Berenger, as we know, was already in custody, but the other defendants had remained at large since their conviction. When their names were called by the officer, Cochrane Johnstone and M'Rae did not answer: they had both fled. Trial, p. 535.

Serjeant Best rose to move in arrest of judgment on behalf of Mr. Butt. Lord Cochrane, he said, had desired him not to move on his behalf, and Mr. Cochrane Johnstone was not present. Lord Ellenborough observed on this, 'If you move in arrest of judgment for one, all have the benefit of it.'

He objected in the first place that no proof had been given at the trial of a material averment in the indictment —namely, that there was war between England *and her allies* and France. Apart, however, from this, he moved on three grounds: (1) that the indictment alleged no offence known to the law, the raising the price of the public funds not being necessarily a crime; (2) that the persons who were to be affected by such a crime were not particularised; (3) that the terms 'funds of *this kingdom*' were inaccurate, as the kingdom of England, whose funds were the only ones affected, had, since the Union, been merged in the United Kingdom of Great Britain and Ireland. p. 536.

Mr. Park followed in support of the motion on behalf of De Berenger. Serjeant Pell said he made no motion on behalf of Holloway, Sandom, and Lyte; and then Lord Ellenborough inquired whether Lord Cochrane wished to address anything to the Court, and explained to him that if he meant to offer any observations in arrest of judgment, this was the proper time. '*We will afterwards hear as a distinct thing whatever may occur to you as fit to be presented to the Court to induce them to grant a new trial; this is probably your object.*' p. 594.

Lord Cochrane said he did not move in arrest of judgment, and the four Judges composing the Court declared their individual opinions that there was no ground for the

motion in arrest of judgment, and then Lord Ellenborough read the report of the evidence.[1]

When he had concluded Lord Cochrane proceeded to read a statement. It will be found at p. 554 of the short-hand report of the Trial. I attempt to give the pith of it.

It had been his misfortune, he said, to be apparently implicated in the guilt of others with whom his sole connection had been in transactions which, so far as he was apprised, had been blameless. He had met De Berenger in public company, but was on no terms of intimacy with him. With Cochrane Johnstone he had the natural family intercourse. Butt had offered voluntarily without reward to carry on his stock transactions for him. The other four defendants were wholly unknown to him, and he had never held any communication with them; of De Berenger's concern in the fraud his sole information arose out of the trial. He was willing to believe Johnstone and Butt to be guiltless; they had repeatedly protested their innocence to him; if any such a plan had been projected by them they had not dared to communicate it to him. It had been said that in offering his former affidavit he incurred the moral guilt of perjury without its legal penalties: he now repeated its statements in a document duly sworn in Court, and it was confirmed by the affidavits of three persons who saw De Berenger in his house on the 21st of February.

With regard to the notes found in De Berenger's

[1] In 3 Maule and Selwyn, p. 67, the King *versus* De Berenger and others is reported for the following propositions:—

'Held, an indictable offence to conspire on a particular day by false rumours to raise the price of the public Government funds, with intent to injure the subjects who should purchase on that day, and that the indictment was well enough without specifying the particular persons who purchased, as the persons intended to be injured.

'That the public Government funds of this kingdom might mean either British or Irish funds, which, since the Union, were each a part of the funds of the United Kingdom.

'The Court will take a judicial notice that a war exists between this country and a foreign State, which war is recognised in different Acts of Parliament, and therefore an allegation to that effect need not be proved.'

This case is still law, and is reprinted in Sir Frederick Pollock's *Revised Reports*, vol. xv. p. 415. It was quoted in Scott *v.* Browne (*Law Reports*, 1892, 2 Q. B. 730), and as recently as last year in Andrews *v.* Mockford (*Law Reports*, 1896, 1 Q. B. 384); both cases were in the Court of Appeal.

possession, it was simply what might happen to any man who had money transactions. Butt made purchases and sales of stock, and having had a small loan of money from him, he had repaid him with bank notes, which Butt used for his own purposes. In what way soever the notes which were received in exchange for his reached De Berenger, he could only say that *his* were given to Butt in exchange for a *bonâ fide* debt, and he had no knowledge whatever of the uses to which Butt applied them.

He had accounted for De Berenger's visit to his house on the supposition of the latter's innocence, but, if guilty, might he not have come there to facilitate his escape by going on board the *Tonnant*? Though not on terms of intimacy with him, De Berenger had the means of knowing where he resided, even if he should not have inquired at the former lodgings where the new address was left, which he might well have done before leaving London, if taking refuge on the *Tonnant* was part of his scheme. Only three days before this Monday he (Lord Cochrane) had received a letter with the intelligence that his brother was dangerously ill, and on receipt of the note, the writer of which was described as an officer, and whose name was undecipherable, he had no doubt that the visitor referred to his brother. It would appear from Dewman's affidavit, which he was about to tender, that he *had* put several questions to him; and as to not recognising the handwriting, his acquaintance with De Berenger was extremely slight, and till that day he had never received more than one or two notes from him, which related to a drawing of a lamp. Had De Berenger been his agent he would never have come immediately in open day to his house; it was inviting detection and ruin; he would have terminated his expedition and found a change of dress elsewhere.

No supposition short of insanity would account for his having made his former affidavit if he had really known of the plot, for what were the circumstances under which it was made? He was suspected of being connected with the pretended Du Bourg; if he had known that De Berenger was the person who had assumed that name, could he

betrayed himself more completely than by publish-
ch a detail to the world? De Berenger's name was
mentioned till brought forward in the affidavit, and
rcumstances of his obtaining a change of dress at
Cochrane's house would never have been known if
Cochrane had not voluntarily discovered it. He re-
on his honour that the colour of the only coat in
he saw De Berenger was green. Witnesses for the
ution had sworn that he wore a red coat on his
in town, but there was no difficulty in changing it
coach on the way to Green Street. Where was the
ty? and for what purpose was the portmanteau?
oof had been given that De Berenger wore the star
rnaments in his presence; no doubt they had been
ide in the portmanteau together with the red coat.
been inferred that the uniform in which he appeared
not have been the green dress of Lord Yarmouth's
because he had shrunk from appearing in it before
obleman; but does any volunteer officer go out of a
ng to make calls in his regimentals? and it was his
not De Berenger's, that he should apply to Lord
uth at all, and the black coat, apart from the hat,
s voluntary offer. If the persons whose affidavits he
ndered had been examined on his trial—and they
end for that purpose—they would have corroborated
rticulars of his own affidavit relative to De Berenger's
Unfortunately, through some mistake or miscon-
n, not on the speaker's part, they were left unnoticed,
course were not examined. And lastly he said:—

ould further submit to your lordships that my affidavit
ade at the impulse of the moment, as soon as I heard
acards had been posted, stating that the pretended
Du Bourg had gone to my house; and, in the conscious
le of my own conduct, I not only introduced the name of
y officer I saw at my house on the day stated, but nar-
very occurrence that took place, and all the conversation
ok place at the interview, to the best of my recollection.
censured for having been too ingenuous in my commu-
n, I trust it will be admitted, that as ingenuousness

disclaims all connection with guilt, it is indicative only of my innocence.

If your lordships will be pleased to reflect on all that I have offered respecting De Berenger, and to bear in mind the avowed intercourse which I had with two other defendants, respecting whose conduct I have been compelled to speak at last upon a supposition of their guilt, I am confident you will perceive how easily any man living so circumstanced might have been placed in the very situation. But waiving the supposition of De Berenger acting under the direction of either of the other defendants, I do still contend that any man who had stock concerns, and was slightly known to De Berenger, ran the same risk with me, of being driven into the ruin which undeservedly, as I am still willing to hope, has befallen the others.

The artifices which have been used to excite so much prejudice against me I unfeignedly despise, in spite of the injury they have done me. I know it must subside, and I look forward to justice being rendered my character sooner or later; it will come most speedily as well as most gratefully if I shall receive it at your lordships' hands. I am not unused to injury; of late I have known persecution; the indignity of compassion I am not yet able to bear. To escape what is vulgarly called punishment would have been an easy thing; but I must have belied my feelings by acting as if I were conscious of dishonour. There are ways even of removing beyond the reach of ignominy, but I cannot feel disgraced while I know that I am guiltless. Under the influence of this sentiment I persist in the defence of my character. I have often been in situations where I had an opportunity of showing it. This is the first time, thank God, that I was ever called upon to defend it.

This extremely able address was listened to *without any interruption* by the Court, but Lord Campbell, as we shall see, has not scrupled to say that Lord Cochrane was deprived of all opportunity of showing that the verdict against him was wrong, and it has become an article of faith that the Court refused him a hearing. *infra*, p. 320.

Lord Cochrane's second affidavit, sworn in Court on the 14th of June, was then read as follows:—

In the King's Bench.
The King *against* Charles Random De Berenger and others.
Sir Thomas Cochrane, commonly called Lord Cochrane,

Trial, p. 563.

one of the above-named defendants, maketh oath and saith, That the several facts and circumstances stated in his affidavit, sworn on the eleventh day of March last, before Mr. Graham, the magistrate, are true; and this deponent further saith, that in addition to the several facts and circumstances stated in his said affidavit, he deposeth as follows (that is to say): That he had not directly nor indirectly any concern whatever in the formation, or any knowledge of the existence of an intention to form the plot charged in the indictment, or any other scheme or design for affecting the public funds. That the sale of the pretended Omnium on the twenty-first day of February was made in pursuance of orders given to his broker at the time of the purchase thereof, on or about the fourteenth of that month, to sell the same whenever a profit of one per cent. could be realised; and that those directions were given, and the sale thereof took place, without any knowledge, information, hint, or surmise on the part of this deponent, of any concern or attempt whatever to alter the price of the funds; and the said sale on the twenty-first took place entirely without this deponent's knowledge. That when this deponent returned home from Mr. King's manufactory, on the twenty-first day of February, which he did directly after the receipt of a note, he fully expected to have met an officer from abroad, with intelligence of his brother, who had by letter to this deponent, received on the Friday before, communicated his being confined to his bed, and severely afflicted by a dangerous illness, and about whom this deponent was extremely anxious; but this deponent found Captain De Berenger at his house in a grey great coat and a green jacket. That this deponent never saw the defendants Ralph Sandom, Alexander M'Rae, John Peter Holloway, and Henry Lyte, or any or either of them, nor ever had any communication or correspondence with them, or any or either of them, directly or indirectly; that this deponent, in pursuance of directions from the Admiralty, proceeded to Chatham to join his Majesty's ship the *Tonnant*, to which he had been appointed on the eighth day of February last; that the ship was then lying at Chatham; that previous to the eighth day of February this deponent applied to the Admiralty for leave of absence, which was refused until this deponent had joined the said ship, and had removed her down to Long Reach; that this deponent, in pursuance of those directions, removed the said ship from Chatham to Long Reach; and after that was done, viz. on Saturday the twelfth day of the said month, this deponent wrote to the Admiralty to apply for leave of absence for a fortnight for

the purpose of lodging a specification for a patent, as had been previously communicated by this deponent to their lordships; that leave of absence was accordingly granted for fourteen days, commencing on the fourteenth of the said month; that this deponent was engaged in London respecting the said specification till the twenty-eighth of the said month, when the said specification was completed; and this deponent left town about one o'clock on the morning of the first day of March, and arrived at Chatham about daylight on the same morning; that on the eighth or ninth of the same month of March this deponent received an intimation that placards were affixed in several of the streets, stating that a pretended Colonel Du Bourg had gone to this deponent's house in Green Street; that he was on board the said ship at Long Reach, and in consequence went to Admiral Surrage, the Port Admiral at Chatham, to obtain leave of absence, which was granted previous to the receipt of the leave forwarded by the Lords Commissioners of the Admiralty; this deponent arrived in London on the tenth of that month, to the best of his belief; and that after his arrival he himself, conscious of his own innocence, and fearing no consequences from a development of every part of his own conduct, and desiring only to rescue his character from erroneous impressions made by misrepresentations in the public prints, he, without any communication whatsoever with any other person, and without any assistance, on the impulse of the moment prepared the beforementioned affidavit, which he swore before Mr. Graham, the magistrate, on the eleventh; that at the time he swore such affidavit he had not seen or heard the contents of the report published by the Committee of the Stock Exchange, except partial extracts in the newspapers; that when this deponent understood that a prosecution was to be instituted against him, he wrote to Admiral Fleming, in whose service Isaac Davis, formerly this deponent's servant, then was, under cover to Admiral Bickerton, at Portsmouth, and that Admiral Bickerton returned the letter, saying that Admiral Fleming had sailed for Gibraltar; that this deponent sent his servants, Thomas Dewman, Elizabeth (*sic*) Busk, and Mary Turpin, on the trial of this indictment, to prove that an officer came to this deponent's house on the morning of the said twenty-first of February, and to prove the dress that he came in, but that the said Thomas Dewman only was called; and as this deponent has been informed, he was not interrogated as to the dress in which the said officer came to his house; and this deponent further saith,

that had the said witnesses been examined, according to the directions of this deponent, and who were in attendance on the Court for that express purpose, they would, as he verily believes, have removed every unfavourable conclusion respecting this deponent's conduct, drawn from the supposed dress in which the said De Berenger appeared before this deponent on the twenty-first of February, and on which circumstance much stress was laid in the charge to the jury, the said De Berenger's dress being exactly as stated in this deponent's former affidavit hereinbefore-mentioned; and this deponent solemnly and positively denies that he ever saw the said De Berenger in a scarlet uniform, decorated by medals, or other insignia, and he had not the least suspicion of the said De Berenger being engaged in any plot respecting the funds, but merely believed he wished, for the reasons stated in this deponent's former affidavit, to go on board this deponent's ship, with a view to obtain some military appointment in America; and this deponent declined complying with his request to send him on board his ship, without permission or an order from the Lords of the Admiralty; and this deponent further saith, that he was in no degree intimate with the said De Berenger; that he had no personal knowledge of his private or public character; that he never asked the said De Berenger to his house, nor did he ever breakfast or dine with this deponent therein on any occasion whatsoever; and further, this deponent saith, that he hath been informed, and verily believes, that the jury who tried the said indictment, and the Counsel for the defence, were so completely exhausted and worn out by extreme fatigue, owing to the Court having continued the trial without intermission for many hours beyond that time which nature is capable of sustaining herself without reflection and repose, that justice could not be done to this deponent.

Sworn in Court the 14th June, 1814. *Cochrane.*

There is little to say on this affidavit; with the facts and assertions contained in it we are already familiar, and also with the reasons which induced Lord Cochrane's Counsel not to call the servants, but the explanation given as to the absence of Isaac Davis, the other servant present in the house on February 21st, with regard to which Scarlett had asked questions at the trial, deserves this observation. The affidavit states '*that when this deponent*

Trial, p. 350.

understood that a prosecution was to be instituted against him, he wrote to Admiral Fleming, in whose service Isaac Davis, formerly this deponent's servant, then was, under cover to Admiral Bickerton, at Portsmouth, and that Admiral Bickerton returned the letter, saying that Admiral Fleming had sailed for Gibraltar.' It appears from the Log of the *Eurotas* at the Record Office that Admiral Fleming hoisted his flag on board the *Eurotas* at Spithead on the 26th of April, and proceeded to sea on the 1st of May. Lord Cochrane must have known long before the end of April that a prosecution was to be instituted against him, and ever since the Admiralty letter of the 17th of March he must have realised how serious his position was. It is difficult to believe that Davis could not have been detained or fetched back, had it been thought that his evidence would have assisted Lord Cochrane, and one would have supposed that he would have been especially useful as a witness from his having known De Berenger by sight.

Cf. supra, p. 42.

The next affidavit offered was that of Thomas Dewman, but Lord Ellenborough said that he had been called as a witness on the trial; if the affidavit went beyond or contradicted what he there stated, it could not be received; and Mr. Justice Bayley added that it was a settled rule not to allow the affidavits of persons who might have been called upon the trial, much less of persons who were called; on which Lord Ellenborough further observed that if any witnesses were not called it was under Lord Cochrane's direction, and it would be a dangerous thing if persons whose evidence might have been discreetly kept back should afterwards be admitted to come forward as witnesses. The next affidavit, that of Sarah Busk, was open to the same objection. Lord Cochrane urged that she and her fellow servant had not been called at the trial from an error in the brief, which, he repeated, 'so little was he conscious of any participation in the fraud' he had not even read.

Trial, p. 567.

Hansard, vol. xxviii. p. 571. *infra*, p. 202.

p. 568.

This brought up Gurney, who said that the Counsel for the defendant were not uninstructed as to the evidence which these witnesses could give, because the affidavits of

all the servants were printed together in Mr. Butt's pamphlet, which was in Court though not put in evidence at the trial. The Counsel for the defendant were thus informed of every circumstance, and they might, if they had thought it would serve their client, have called all those persons as witnesses. Mr. Justice Le Blanc repeated that there was no rule better established than that after trial the affidavits of persons who had been called, or might have been, could not be received. The Court could not hear the reason for keeping back their testimony.

Trial, pp. 568–9.

An affidavit of Major Cochrane was put in and read, together with a medical certificate as to his illness at the beginning of the year. In the affidavit it was stated that the Major had written to his brother Lord Cochrane early in February, to acquaint him with his condition, as he had then little hope of recovery.

Lord Ellenborough pointed out that this affidavit was not material to show that Lord Cochrane was in possession of his brother's letter previous to the morning of the 21st of February. Lord Cochrane replied that he had received it on the Friday previous to the fraud. But Lord Ellenborough said that this was a fact capable of being distinctly verified.[1]

p. 571.

An affidavit of De Berenger's was put in pleading for merciful treatment, but not denying the justice of the verdict.

p. 573.

Butt had not instructed Counsel with any affidavit, and he applied in person, not for mercy, but for a new trial, saying that if his case had been separated from other persons in the indictment it would have been the means of his acquittal. He protested his innocence, and said that the bank notes which had been stated to have passed through his hands must unavoidably have done so, as he permitted, without thinking it any crime, at the solicitation of his friends, that all drafts connected with the Stock

p. 571.

[1] When Mr. Justice Bayley put to Lord Cochrane that the original letter was not affixed to the affidavit, he was met with the answer, 'It is not; I had no idea of bringing the letter of my brother before a Court of justice.'

Exchange business should be paid in his name whether he was in London or not.

Park and Richardson both addressed the Court in mitigation of punishment on behalf of De Berenger, and Serjeant Pell and Mr. Denman performed the same office on behalf of Holloway, Sandom, and Lyte. Trial, pp. 575–7. pp. 577, 581.

Lastly, Gurney spoke on behalf of the prosecution, who, he said, had sought an honourable end by honourable means, and now asked for justice, and justice only. It might fairly be urged on behalf of Sandom, Holloway, and Lyte that they did not aggravate their case at the trial in the manner in which the other defendants aggravated theirs, by attempts to defeat public justice as wicked as they were absurd, for all the swearing before the trial, all the swearing at the trial, and all the swearing of that day had proceeded on the assumption that, if men will have the hardihood to swear, there will be found those who have the credulity to believe. With regard to Lord Cochrane's affidavits as to the dress worn by De Berenger on the occasion of his visit to his house, it was singular that a servant should have been called at the trial and examined upon other points to the confirmation of his master's affidavit, and yet that Lord Cochrane's Counsel did not venture to put to him a question as to the colour of De Berenger's coat, and that they did not venture to call the other servants. No man could doubt that the reason why they abstained from so doing was that, after the evidence which had been given by all the witnesses for the prosecution as to his dress, continued up to the last moment by the driver of the hackney-coach, who swore to De Berenger's entering the house in a *scarlet* coat, if all the servants in the house had been called to swear that the colour of De Berenger's coat was *green*, no man alive could have believed them. He concluded with a scathing reference to the former services of Lord Cochrane, which had been pressed upon the jury by Serjeant Best. They had neither been forgotten nor unrewarded by his sovereign or his country. In return he had engaged in a conspiracy to perpetrate a fraud by producing an undue effect on the public funds, of p. 582.

which he was an appointed guardian, and to perpetrate that fraud by falsehood. He had attempted to palm the falsehood upon that very board of Government under the orders of which he was then fitting out on an important public service, and still more, as if to dishonour the profession of which he was a member, he attempted to make a brother officer the organ of that falsehood.[1]

The defendants were then committed to custody, and ordered to be brought up the next day to receive the judgment of the Court.

Trial, p. 599.

On Tuesday, the 21st of June, sentence was pronounced by Mr. Justice Le Blanc, the senior puisne. After recapitulating the evidence at the trial and the circumstances which had been adverted to in Court on the previous day, he said that the Court had deliberated upon the case, and could not in this instance feel itself justified in measuring out justice to one by a different measure from that in which justice would be measured out to others. The sentence of the Court was that Lord Cochrane and Butt should pay to the King a fine of 1,000*l.* each, that Holloway should pay a fine of 500*l.*, that all six defendants present in Court should be imprisoned in the King's Bench prison for twelve months, and that during that period Lord Cochrane, De Berenger, and Butt should be set in the pillory opposite the Royal Exchange in the city of London for one hour. The defendants were further ordered to be detained in prison until their fines were paid.

The whole of the proceedings connected with the motion for a new trial have been the subject of serious misrepresentations. With these I deal in subsequent chapters, but

[1] This is an aspect of the case that has not attracted the notice it deserves. For an officer on actual service and on full pay, in command of a line-of-battle ship, in time of war, to be convicted of an attempt to deceive his own Admiralty by propagating false war news, must in every country be considered a crime of the highest magnitude. Well might the Solicitor-General say in the House of Commons: 'To deceive an Admiral in His Majesty's navy—that, too, at a period when the fate of Europe hung in the balance, when any false statement, particularly of the nature alluded to, might have so influenced some brave man's rashness or some coward's fear as to defeat the events which have since happily occurred!'

Hansard, vol. xxvii. p. 1007.

there is one point which it is as well to clear up before proceeding further.

It has been pressed upon me that, to the lay mind, it appears as though Lord Ellenborough, in forming one of the Court which heard and determined the motion, was in effect sitting to determine an appeal from himself. This is a misunderstanding, due to a misapprehension of the procedure by which new trials were moved for and granted or refused in civil and criminal cases.

In Lord Ellenborough's time, and for many years after, it was the unvarying custom for the judge who had tried the case to be present when the application for a new trial was heard by the Court sitting in Banc, if he was a member of the Court. The foundation of the application would be the judge's notes, and they were read over to the Court by the judge who had tried the case, if a member; if, however, the motion was made in the King's Bench with regard to a case tried before a Baron of the Exchequer or a Justice of the Common Pleas, the latter would send a copy of his notes, which would be read in Court by the junior puisne present, and, if need be, a personal interview with the judge who had presided would be sought and obtained.

If, however, the judge who had tried the case formed one of the Court, he not only read over his notes, but gave a full statement as to how he had ruled and decided, and not unfrequently there would be a strong difference of opinion expressed by the Counsel as to what had actually taken place. The notes having been read, Counsel were heard, and the various members of the Court gave their judgments.

The fusion of the old Courts of Common Law, together with recent legislation, have altered this, but in Lord Ellenborough's time it would have been unprecedented and highly inconvenient for the judge who tried a case to have absented himself from a discussion where his presence was required. Illustrative cases are hardly necessary, but I may quote one—the Queen against Newman, the trial of the future Cardinal for alleged libel on Achilli. There a motion for a new trial was made in the Queen's Bench,

1 Ellis and Blackburn, p. 268.

and it was heard not only by Coleridge, Wightman, and Erle, J.J., but by Lord Campbell, L.C.J., who had presided at the original trial. In the Court of Crown Cases Reserved it is to-day the general practice of the judge who has tried the criminal and reserved the case to be one of the Court who hear and determine on it.

CHAPTER VI

LORD COCHRANE'S EXPULSION FROM PARLIAMENT

THE conviction and sentence were followed almost immediately by the dismissal of Lord Cochrane from the navy and his degradation from the Order of the Bath. But Lord Cochrane and Mr. Cochrane Johnstone had seats, as we have seen, in the House of Commons, and it was inevitable that that assembly should take notice of events so deeply involving the public and private honour of its members. As early as the 10th of June Mr. Broadhead had given notice that he intended to call the attention of the House to the subject. The Attorney-General pointed out that such application should not be made until the expiration of the period during which it was competent for the defendants to move for a new trial—namely, within the first four days of the term after such conviction. On the 22nd of June the same member moved for a copy of the record of the proceedings against Lord Cochrane and Mr. Cochrane Johnstone, which was duly ordered. On the 23rd of June the Speaker informed the House that he had received a letter from Lord Cochrane, dated from the King's Bench prison, asserting his innocence and desiring that notice and opportunity of attending in his place might be given him upon any question respecting his conduct.

Hansard, vol. xxviii. p. 50.

p. 121.

p. 180.

On the following day a copy of the record was laid on the table of the House. Mr. Broadhead moved that the record should be taken into consideration on a given day. Mr. Holmes then moved that there should be laid before the House a copy of the report of the trial, together with Lord Cochrane's statement or any affidavit filed by him in the Court of King's Bench. This was seconded by Mr. A. Browne, whose speech is remarkable as containing the

p. 212.

p. 232.

p. 232.

first germ of that contention, which has so often been repeated that it has now come to be accepted, that Lord Cochrane had been prevented by technical rules from bringing the judgment pronounced against him under revision of the Court.

Hansard, vol. xxviii. p 288.

The Attorney-General (Sir William Garrow) opposed the motion as an attempt on the part of the House of Commons to re-try the case, to sit as a Court of Appeal, and convert itself into a Court of Error on the facts on which a jury had pronounced a verdict. He pointed out the mistake into which Mr. Browne had fallen, and showed that Lord Cochrane would have been entitled to Serjeant Best's motion in arrest of judgment if successful, and that on the second occasion Lord Cochrane had been allowed to do what the technical rules of the Court had prevented him doing on a preceding day. He had read from a paper, 'ably written and evincing profound knowledge of the law, a minute and scrupulous examination of the evidence.' He had tendered affidavits in support, some of which the Court had been unable to accept, because they were made by persons who had been, or might have been, called at the trial. The Court did not entrench itself behind their technical rules or say that it was too late to grant a new trial; they had taken the propriety of a new trial into their consideration, and, in their judgment, there was no ground for it. In the course of his remarks he threw out one observation which is important as bearing on the sentence. 'Whether the circumstances of the rank and station of the individual in question, or the services which he had formerly rendered the country, might be deemed fit matter for representation in a quarter to which a proper appeal was never made without success he would not say.'[1]

p. 248.

Mr. Francis Horner,[2] who supported the Attorney-

[1] Sir Wm. Garrow's speech is too long to quote verbatim, but it puts the matter so clearly in the words of one who, if not a profound lawyer, was almost the most successful Nisi-Prius advocate of the day, and whose knowledge of the practice of the Courts was unrivalled, that I have printed it in the Appendix.

infra, p. 516.

[2] There is an interesting account of Horner by the late Walter Bagehot, *Literary Studies: The Early Edinburgh Reviewers.*

General, though dissenting from him on many points, said that he opposed the motion because he had the most unshaken conviction of the regularity of the proceedings at the trial; he was fully satisfied with the verdict of the jury and the judgment of the Court. As to the rules of Court, he had not the least doubt that the Court proceeded strictly and regularly in the present case. If that rule was established it was necessary to enforce it in that and in all other cases. The motion was negatived.

After another postponement, made at Lord Cochrane's request, his case came under the consideration of the House on the 5th of July. Before the order of the day was reached a short discussion took place on a petition from Alexander M'Rae, who had fled from sentence and was supposed to be abroad, but who had sought out his Parliamentary representative, and requested him to present a petition on his behalf. In this document he asserted that he was competent to unveil the whole mystery, that he was anxious to rescue Lord Cochrane, who, though unhappily included in the verdict, had been unjustly condemned of participation in a plot to which he was in every stage a perfect stranger. He further alleged that he had offered a similar disclosure to the Stock Exchange, but they had rejected it on learning that it went to exculpate Lord Cochrane, and they had included him (M'Rae) in the indictment in order to prevent him from giving evidence on the trial. For this purpose he asked to be examined at the bar of the House. The House refused to receive the petition from a convicted prisoner, who was a fugitive from justice, who had already made the preposterous offer to tell all he knew for 10,000*l.*, who had turned informer at this late hour, and whose conviction disqualified him from giving evidence in a Court of law.[1]

Hansard, vol. xxviii. p. 588.

See 2nd Stock Exchange Report p. 287 *infra*

The Speaker directed Lord Cochrane, who was in attendance, to take his place. It was proved that a messenger of the House had attempted without success to serve a similar order on Mr. Cochrane Johnstone, and a

[1] M'Rae was subsequently arrested and sentenced to twelve months' imprisonment. See p. 235, *infra*.

couple of members stated that they had last seen him at Calais on the 21st of June. Mr. Broadhead then moved that the record of the conviction and sentence be entered as read. And the Speaker said that it was now the time for the noble lord to state what he had to say in his defence.

Hansard, vol. xxviii. p. 543.

Lord Cochrane accordingly rose and read a statement from a written paper. What the full statement was will probably never be known.[1] At an early period in the reading Lord Cochrane made use of such violent expressions in mentioning Lord Ellenborough that a murmur arose in the House, and the Speaker said that, while unwilling to interrupt the noble lord, the House could not suffer virulent invectives or words to be made use of by him, which were not fit to be heard if not proved.

He added that the House would not allow them to be afterwards repeated, merely because they were said; and Lord Castlereagh at the commencement of the debate which ensued warned the reporters that if they printed these objectionable expressions they would do it at their peril of legal proceedings for libel being taken against them. In pursuance of this hint the decorous pages of Hansard are strewn with 'asterisk and dash,' and it is often difficult to ascertain what Lord Cochrane's meaning could have been. I cull a few specimens at random.

pp. 547 *et seq.*

. . . . Sir, I have been tried by twelve men. . . . . If there be any meaning in the word *packed* as applied to juries . . . . .

Was not the Master of the Crown Office . . . . ?

For what other purpose than that of securing . . . . was the case removed from the Old Bailey to the Court of King's Bench . . . . ?

Throughout the whole of this, and indeed every part of the charge, a charge that never was surpassed by . . . ., it is obvious,

[1] Lord Cochrane afterwards enclosed in a letter to the High Bailiff of Westminster a full and unmutilated account of the defence made by him in the House of Commons, with a request that he would read it at a public meeting, but the High Bailiff refused (*Times*, July 12, 1814). It is possible that the full speech may have been reprinted, but I have not succeeded in finding it.

The anonymous author of the *Remarks on the Case of Lord Cochrane* says (p. 6) that his defence before the House of Commons was 'expressed by Lord Cochrane in the coarsest and grossest terms which language can supply.'

Sir, that Lord Ellenborough loses sight of the evidence and speaks entirely from his own . . . .

This . . . . Judge.

In short, Sir, he was . . . .

As this speech is the first indication of the charges which have been so persistently brought against Lord Ellenborough; and as the germs of many of the misstatements to be found in the 'Autobiography of a Seaman' and elsewhere are contained in it, I feel compelled to give the substance of it, though it would have been a kindness to Lord Cochrane had it been expunged from the proceedings of the House. The Right Hon. G. Ponsonby, the leader of the Opposition, who voted against the motion for expulsion, began his speech by observing that if the severest and bitterest enemy of the noble lord had been employed to injure his cause, such enemy could not have done it more injury than the noble lord himself had that night endeavoured to do to it.

Hansard, vol. xxviii. p. 591.

After inveighing against the cruelty of his sentence as out of all proportion to the crime charged, and after asserting his innocence in the presence of the House, and with the eyes of the country fixed upon him, he attacked in unmeasured terms the conduct of the preliminary inquiry held by the Stock Exchange, with whom he asserted members of the Legislature had co-operated. He knew he had to expect from some of those in power, whom he had in vain endeavoured to bring to justice, everything that malignity could suggest and cunning perpetrate. His endeavours to expose the sources of corruption had raised against him the enmity of many corrupt and hypocritical individuals.

He next complained of the inclusion in the indictment with him of men who had confessed their share in the fraud, but had denied that he was a party to it, and then he launched forth into fierce abuse of his tribunal and of the institution of special juries,[1] which he called a

[1] This is not the place to defend the institution of special juries, but I leave it to any fair-minded man to say whether a case involving such highly technical evidence of Stock Exchange transactions, and such a complicated

contrivance of crafty tyranny, and he trusted that the horrible injustice that had been practised on him might be the means of totally extirpating that intolerable evil. He then detailed his services to the country since he had last been actively employed, his appointment to the *Tonnant*, his expenses in fitting her for sea, and his first information received on the 8th of March from a paragraph in the public prints that his name was connected with the fraud. On reading this paragraph he obtained leave from his superior officer, and hastened to town to clear his character without any communication with the Admiralty; a letter sent him by Lord Melville at that date still remained unopened.[1] He had made his affidavit at the earliest possible moment, firmly impressed with the belief, from the difference of uniform, that De Berenger could not have been the person who appeared before him in Green Street. Dealing with the observations of Gurney and the Chief Justice as to the circumstances connected with the receipt of the note from De Berenger on the day of the fraud, he practically repeated what he had urged in the King's Bench on the 20th of June, and he read the affidavit of Major Cochrane and the surgeon, which documents, he said, had been discredited, because the actual letter of the former could not be produced and the post-mark shown.

Hansard, vol. xxviij p. 560.

He maintained that his conversation with De Berenger was not only true, but perfectly probable, and he read a letter from De Berenger to Tahourdin, dated the 17th of February, in support of this.[2] After the apprehension of De Berenger he had addressed a letter to him by the advice of Cochrane Johnstone through the Home Office, calling on

story of the permutations of bank notes, could have been left to a common jury without involving a travesty of justice.

[1] If Lord Cochrane's story is true, it seems an offhand proceeding for a captain of a line-of-battle ship to treat the letter of a First Lord of the Admiralty in such a manner.

[2] What purports to be the whole of this letter, from which Lord Cochrane quoted a passage to the House, was printed in the pamphlet *De Berenger Detected*. It is full of enigmas, and I do not profess to construe it, but if a date be assigned to it subsequent to instead of before the fraud, a good deal of it becomes fairly intelligible. It will be remembered that the dating of the Tahourdin correspondence put in at the trial (p. 157, *supra*) gave rise to considerable suspicion.

him to state to the public his reasons for paying the visit on the 21st, and De Berenger had replied that 'nothing could exceed the pain he felt when he perceived how cruelly, how unfairly, his unfortunate visit of the 21st of February was interpreted, which with its object was correctly detailed in the affidavit.'

Cochrane Johnstone had assured him that De Berenger could prove an *alibi* by at least a dozen credible witnesses; and relying on this and his own innocence, he felt so secure as to the issue of the trial, that he gave no instructions to Counsel, attended no consultations, and never even read his own brief, into which a serious error was introduced. He had ordered that his case should be defended separately, and he had retained Topping and Scarlett as his own Counsel. When in the country, his solicitors informed him that it had been determined at a consultation to defend his case jointly with Butt, and they were considering the advisability of uniting Cochrane Johnstone's also. To this, by a letter of May the 29th, he had positively declined to accede; and yet the three cases were joined, and his cause was pleaded by Serjeant Best, whom he had not retained, while his own Counsel did not open their lips. Cochrane Johnstone a few days before the trial entreated him to be perfectly easy as to the result, for he had seen De Berenger's brief, and a copy of it was shown him (Lord Cochrane) on his return to London; the case seemed so perfectly clear that he felt it impossible that De Berenger could be the man who personated Du Bourg. He had nothing to do with the *alibi* set up at the trial, as a letter from his solicitor, dated July 1st, which he proceeded to read, would show.

Hansard, vol. xxviii. p. 559.

Lord Cochrane again most solemnly affirmed that on the occasion of De Berenger's visit he only saw him in a green uniform; but in his brief the coat was described as a red one with a green collar. His attention was never called to this, and Serjeant Best admitted in his speech to the jury that it was a red coat, and refused to examine the servants on this point, though he had repeatedly pressed that this should be done, both before and during the

course of the trial. The only witness to the point of De Berenger's coming to his house in a red coat was Crane, the hackney-coachman, who volunteered the statement, unasked, at the trial, apprehensive lest he should lose the Stock Exchange reward of 250*l*. This man Crane at the time he gave evidence was under sentence of suspension for atrocious cruelty to his horses.

Hansard, vol. xxviii. p. 564.

As for the bank notes, he could prove they were part of a sum given by him to Butt to discharge his *bona fide* debts—namely, a debt of 200*l*. to Butt himself for money borrowed, and the payment of his wine merchant, whose bill amounted to nearly 700*l*., and the payment of which through the hands of Butt had escaped his recollection at the time of the trial. His wine merchants, Wilkinson and Crossthwaite, had filed an affidavit from which he found he had spent two hours in their cellars tasting wine on the 19th of February, the very day on which the fraud was alleged to have been planned.[1] It was at Mr. Butt's suggestion that he had first engaged, in October previously, in Stock Exchange speculations, and from that date to the 19th of February he had realised upwards of 4,200*l*. He had witnessed many generous and disinterested acts of Mr. Butt's, and he thought him incapable of a dishonourable action, and in justice to him he must observe that the notes in question, as appeared at the trial, were part of a sum lent by Butt on the 25th of February to Mr. Johnstone.

He then proceeded to attack the conduct of Lord Ellenborough. He had compelled the Counsel to enter upon the defence after midnight, when that Counsel declared himself quite exhausted, and when the jury, who were to decide, were in a state of such weariness as to render attention to what was said impossible.[2] By adjourning when he did he had separated the evidence from the argument, and had reserved his own strength, and that of the Counsel for the prosecution, for the close. Lord

[1] Lord Cochrane's full explanation on these points will be found and considered at pp. 229–233, *infra*.

[2] It should be remembered that Lord Cochrane had not been himself present in Court.

Ellenborough had unwarrantably insinuated that he had delayed the disclosure of De Berenger's name till he knew, or believed, that he had escaped, and yet he had done nothing to contribute to his escape; he had refused his application to let him join the *Tonnant* when he could easily have smuggled him on board.[1]

Lord Ellenborough had taken the unfavourable part of his affidavit as true, and the favourable part as false—when the former was not corroborated nor the latter contradicted by any evidence. He had represented him as admitting that De Berenger came into his presence *disguised*, and that he went away with his disguise in a bundle. If there was one word of this in the affidavit then he was perjured, and Lord Ellenborough spoke the truth. Lord Ellenborough had been incorrect in stating that more than one witness saw the visitor enter the house in the scarlet coat, and that any witness at all spoke to the star and medallion. Lord Ellenborough ought to have left it to the jury whether De Berenger had come there by any previous arrangement with Lord Cochrane. The Judge had said that De Berenger had stripped his scarlet uniform off at Lord Cochrane's house, when he knew that there was no such evidence. He had misrepresented the evidence as to the star and medal; he had omitted to remind the jury that it was proved that he had been from home when De Berenger arrived, that the latter had remained at his house two hours before he returned, and that he had with him a portmanteau big enough to wrap up a coat in.[2]

Then followed a stream of other particulars, in which he

[1] Lord Cochrane has frequently asserted this, and no doubt he had the power to do so, but it must be remembered that the *Tonnant* did not leave England until the 7th of April, many weeks after the fraud. De Berenger's presence on board would have soon been known and talked about, and from what we know of him he was not at all the sort of man to be kept hidden, or one who would have been likely to refrain from dangerous gossip.

[2] I dare not weary the reader by contrasting this with what Lord Ellenborough really did say; he has the material before him. But I must point out that Lord Ellenborough expressly said that there was a portmanteau, though he omitted the words 'big enough to wrap a coat.' I shall attempt to show in another chapter that the fact of De Berenger having a portmanteau at all in Green Street is very problematical. *supra*, p. 170. *infra*, p. 269.

alleged that Lord Ellenborough had wrongfully directed the jury—'In short, sir, he was . . . .' The main object of the prosecution had been his degradation, and especially his expulsion from the House. Before taking leave of the Lord Chief Justice he had two or three questions to ask which needed an answer. Did he take an active part in promoting the prosecution? Did he visit Lord Melville at the Admiralty to request that Lord Cochrane might be suspended from his command and detained for the purpose of being prosecuted? Did he advise the Counsel for the prosecution to shape the indictment after a particular and well-known case?

Hansard, vol. xxviii. p. 571.

He had twice, he said, made an application for a new trial, and twice been refused; *on the latter occasion he had been permitted to speak*, and the statement which he then read convinced many persons in Court, and had since convinced many thousands out of Court, of his entire innocence, and he proceeded to read his affidavit of the 14th of June, and those affidavits of his servants which the Court had refused to listen to on the 20th. I give them as far as material.

Dewman, the footman, in addition to the story he had told at the trial, swore that, after he had taken the note to Lord Cochrane at the factory, Lord Cochrane asked him several times if he knew who the gentleman was that had written it, and made several inquiries as to his appearance and dress, observing that he could not make out the whole of the note or who it came from. To this Dewman answered that he was an army officer, upon which Lord Cochrane, having torn the note, threw it down, and then said, 'Very well, Thomas, I'll go back.' When the officer came into Green Street, as above stated, he was dressed in a grey great coat, such as the Guards wear, which was buttoned very close round the body up to the breast, and such part of the *under coat* as deponent could see was of a dark green colour. He had also a portmanteau big enough to hold a change of clothes.[1] Mary Turpin, the cook maid, deposed that she twice

[1] I think it impossible to read this affidavit without being convinced of the wisdom of the rule under which it was refused in Court. It is obviously prepared to meet the observations in Gurney's reply and the Lord Chief Justice's summing-up.

went into the parlour when the officer was there, and that he wore a grey great coat buttoned up with a dark green collar or green facing under it. Sarah Bust, who had been in Lord Cochrane's service at the time, but had since left, swore that the officer had a grey great coat, which was buttoned up to the breast, and that the neck of his under coat, or such part as she could see, was a dark green. The affidavit of the housekeeper did not relate to the colour of the coat, but only to the cap. 'Seeing a cap in the parlour, she inquired of Mary Turpin whose cap it was, and the said Mary Turpin replied that it belonged to an officer who was with his lordship in the drawing-room. She took up the cap, which was of a dark brown colour, with a gold band and tassel, and immediately afterwards went to her room, and did not see the officer.'

After concluding his written statement Lord Cochrane added a few impassioned words asserting his innocence before Almighty God, and imploring investigation. The Speaker said that, having concluded his defence, he must now withdraw, and Mr. Broadhead rose to move a declaratory resolution to the effect that it appeared to the House, from the Record, that Lord Cochrane had been convicted of conspiracy to defraud. To this Mr. Browne moved an amendment: 'That the statement made by the noble lord, together with the affidavits accompanying that statement, be referred to a select committee, with power to examine witnesses and send for papers, and that they do make a report thereupon to the House.'

Hansard, vol. xxviii. p. 579.

p. 582.

The Attorney-General opposed the amendment, and in the course of his speech referred to Lord Cochrane's challenge as to whether or not Lord Ellenborough had advised the Counsel for the prosecution to shape the indictment after a particular and well-known case. He answered emphatically that the learned lord never saw the indictment, or any copy or abstract of it, except when it was handed up to him to make his observations upon it. There was no man in Westminster Hall who would suffer himself to be employed, or even approached, by a person who should dare to approach the judges on such a matter, or who would suffer himself to be approached by them. It had been stated that the Judge was partial and wicked, and

p. 587.

that the jury had been selected, picked, and packed together by an officer dependent upon and removable at the pleasure of the Court. It was, indeed, with difficulty that the House could restrain its indignation on hearing these foul aspersions, for it was evident that the Judge could not by any possibility control the selection of a jury. The master of the Crown Office was not appointed by political influence, but by his Court, and he held his office during good behaviour. What would those members of the House who served on special juries at the Assizes say if they were accused of being packed? Yet they were packed quite as much as the jury which tried the noble lord. The Master of the Crown Office merely turned over the leaves of the book which was given him by the Sheriff, and in the presence of the agents of both parties selected forty-eight names. Each party strikes off one till the number is reduced to twenty-four; these twenty-four are to appear at the trial, and no one knows which twelve will be selected, as it depends solely on the presence or absence of the jurymen. It was the same in criminal cases. The Chief Justice never saw this book of freeholders; the master never saw it till the time of trial, when the Sheriff gave it to him, and it would be difficult to show that of late years sheriffs of London had been disposed to pack juries from subserviency to the Crown. In the present case it had not been left to the agents to reduce the list, but Mr. Cochrane Johnstone had himself attended when the list was reduced from forty-eight to twenty-four.

Hansard, vol. xxviii. p. 589.

Mr. Brand supported the amendment, on the ground that Lord Cochrane had stated that he should be able to prove the means by which the bank notes passed to De Berenger, and that five persons would prove that De Berenger had appeared in his house in the dress which the noble lord had described in his affidavit.

p. 590.

Mr. Croker, as Secretary to the Admiralty, rose to reply to the other challenge thrown down by Lord Cochrane as to whether the Lord Chief Justice had visited Lord Melville at the Admiralty, to request that Lord Cochrane might be suspended from his command, and be detained

for the purpose of being prosecuted. From being in the confidence of the noble lord at the head of the Admiralty, as well as from the situation he held, he must say that to his entire belief no such interview had taken place; that no such steps had been taken; that the resolution of suspending the noble lord from his command had been discussed at an open board, and that the noble lord at the head of the board had stated the facts to him which he had just declared, assuring him that no communication whatever, either directly or indirectly, had taken place between him and the Lord Chief Justice on the subject in question.

The amendment was supported, amongst others, by Mr. Barham, Mr. Ponsonby, Mr. Stuart Wortley, Mr. Whitbread, Sir Francis Burdett, and Lord Archibald Hamilton; it was opposed by Lord Castlereagh, the Solicitor-General, Mr. Bankes, Mr. Bathurst, and Mr. Wilberforce. Some of the speakers avowed themselves convinced of Lord Cochrane's innocence by his statement in the House that night, others declared that there was at any rate ground for a new inquiry; that it had been refused by the Courts, and that the appointment of a committee was the only machinery for procuring it; not one voice was raised in support or sympathy with the 'foul aspersions' thrown on Lord Ellenborough.[1]

Mr. Wrottesley moved the adjournment of the debate, which Lord Castlereagh opposed, as it would be 'doing a great injustice to the venerable persons who sat with the Lord Chief Justice on the Court of King's Bench, as well as to that learned person himself.' Mr. Browne withdrew his motion for a committee, and the House divided on the question of the adjournment, for which the yeas were 74,

Hansard, vol. xxviii. p. 606.

[1] Without making any quotation from these speeches, there are two points which may be saved from oblivion. Lord Castlereagh pointed out that the alleged misdirection of the Judge was never mentioned by the noble lord either upon his motion for a new trial or in his affidavits when brought up for judgment, and Mr. Bathurst strongly derided the idea of a systematic plan on the part of Lord Cochrane's political opponents to obtain his exclusion from the House, on the ground that he was not of sufficient importance to make any party therein care for his absence or his presence.

Hansard, vol. xxviii. p. 606.

the noes 142. The first or declaratory resolution was agreed to without a division. The House again divided on the resolution of expelling Lord Cochrane, and there were 140 votes for the expulsion, against it 44. The House then voted *nem. con.* the expulsion of Cochrane Johnstone, and new writs were ordered to issue for Westminster and Grampound.

I cannot here abstain from quoting a letter of Brougham's written on the 12th of July, which expresses the opinion of a strong Whig, and one of Lord Cochrane's Counsel, on the tactics employed by him in this debate. It is all the more interesting as Lord Brougham's sayings and writing are so constantly referred to in the 'Autobiography of a Seaman.' He had been out of Parliament since 1812, and, as will be seen, would have liked to have stood for Westminster on the vacancy created by Lord Cochrane's expulsion; but this was not to be, and on the 12th of July he wrote the following letter :—

Temple: July 12, 1814.

DEAR LORD GREY,—You will before this time have seen the event of the Westminster election—at least what is sure to be so—the return of Lord Cochrane without opposition.

Everything was arranged on Tuesday last, and I should have walked over the course. Lord Cochrane had never been even mentioned; but the debate, and especially George Ponsonby's and Whitbread's and Wortley's speeches—preferring his assertions of innocence to the verdict of guilty—had the immediate effect of putting it to the Westminster men to condemn him; and they all said, 'Though we want to get rid of him as a member, yet it is now cast upon us to declare him guilty, and upon evidence upon which forty-four of the House of Commons think insufficient.' This has proved decisive; and though many of them wished a middle course, that he should be *declared* innocent and not elected, I among others told them plainly *that* was not the way to serve Lord Cochrane.

It is understood that an arrangement has been made to choose him this one time, and that he is not to come forward again in case of expulsion, &c. The great thing was to keep all together, and avoid a splitting. In this they seem hitherto to have succeeded perfectly.

Burdett's declining influence has been somewhat revived by this hit; but I fear the extreme folly of attacking Lord Cochrane's attorneys, &c., will lead to such a defence on their part, as will damage both Lord Cochrane and Burdett. I fairly warned them of the danger. Lord Cochrane partly listened; Burdett would not.

Lord Tavistock and his brothers, with many others, had most warmly come forward for me, and it stands as well as possible on the whole.

Yours truly,
H. B.[1]

As will be seen, Lord Cochrane was re-elected for Westminster without opposition, but previously to the date of the election Lord Ebrington, one of the minority of forty-four, had given notice of his intention to move for an address to the Crown, praying that the part of Lord Cochrane's sentence relating to the pillory might be mitigated, on the ground of his professional services. Lord Castlereagh asked that the motion might be postponed for a week, and accordingly it came on on the 19th of July, and subsequently to Lord Cochrane's re-election. Before proceeding to address the House, the mover read a letter from Lord Cochrane, written on the 13th of July, and strongly protesting against the motion as 'having a tendency to bring down upon me a greater indignity than any which has been offered to me by my enemies.' He could not for a moment consent that any past services should be prostituted to the purpose of protecting him from any part of the vengeance of the law. '*If I am guilty I richly merit the whole of the sentence which has been passed upon me;* if innocent, one penalty cannot be inflicted with more justice than another.' The speeches of the proposer and seconder (Lord Nugent) were unexceptionable in tone, and, without entering upon the question of Lord Cochrane's innocence or guilt, were devoted to an eulogy of his past services and character, to the severity of his punishment, and its further consequences in his loss of profession and honours, and to the punishment of the pillory in general,

Hansard, vol. xxviii. p. 761.

p. 780.

[1] *Life and Times of Lord Brougham*, vol. ii. p. 105.

which they stigmatised not only as a disgrace to the age, but as a punishment which might turn out to be cruel and degrading, or the contrary, according to the circumstances, entirely independent of the control of the Judge who imposed it.

A debate of considerable length followed, towards the close of which Lord Castlereagh informed the House that the Crown had taken steps to interpose its mercy with regard to the pillory, not only as far as it related to Lord Cochrane, but to all the other parties. The Crown flattered itself that it might in this instance extend its mercy, *not* on the ground of any claim recognised in the parties who were the objects of that mercy, but because of the *infrequency* of the crime, and in the hope that the conviction and sentence, though not fully carried into effect, *would* deter others from the repetition of it. With regard, however, to the motion, he would never admit the *doctrine* which went to establish privileged orders, as it were, in the country with regard to the punishment for crimes, upon a principle of aristocracy most dangerous and unwise, that those artificial ranks which ought to have the effect of elevating the mind above the commission of such base and dishonourable practices should be converted into a claim to secure the individuals from the punishment they had incurred.

The motion accordingly dropped, but the course of the debate had given rise to some speeches which are of considerable importance, not so much as affecting the conduct of Lord Ellenborough at the trial, but as throwing a light on several of the incidents in it, and as enabling us to test the accuracy of a good many statements in the 'Autobiography of a Seaman.'

Hansard, vol. xxviii. p. 765.

Lord Nugent was followed by the Solicitor-General (Sir Samuel Shepherd), who insisted that several circumstances had been brought before the House that evening with a view to induce a belief of Lord Cochrane's innocence. This led him to review portions of the evidence at the trial,[1]

[1] In the interval between the two debates of the 5th and 19th of July the shorthand notes of the trial had been printed from the notes taken in

and also Lord Cochrane's speech made before the House on the 5th of July. If that address were attended to it was clear that a most formidable conspiracy indeed existed against the noble lord, of which conspiracy the Judge and jury were, contrary to their solemn oaths, the prominent members. But not only were the Judge and jury partial; his Counsel had neglected his case. This was a most extraordinary charge, considering that these Counsel were known to be among the most able and eminent in the profession; they included one name, Mr. Brougham, whom it was impossible to suspect of any relaxation of effort from the influence of party spirit. Was it credible that such distinguished men would abstain from any exertion or agree to stultify themselves with a view to prejudice the case of the noble lord?

The attorneys of the noble lord, two as respectable men as belonged to any profession, and who acted for none of the other defendants, but for Lord Cochrane solely, had drawn up his brief according to the instructions they had received. Without any invasion of professional confidence, he could state as a positive fact that all the instructions upon which the brief was drawn up were received from Lord Cochrane himself, and that the brief, after it was drawn up, together with the statements of the witnesses by which it was proposed to sustain it, were read over by the noble lord, by whose suggestion a correction was made in it. Yet the noble lord, in the Court of King's Bench, but especially in this House, had spoken in a high tone of confidence that he truly had given no instructions to his

Hansard, vol. xxviii p. 771.

by William Brodie Gurney, the shorthand writer to both Houses of Parliament, and were in the possession of members of the House. They were now able to test many of the assertions made by Lord Cochrane, and the effect of this process is admirably shown in the speech of Mr. Wrottesley. 'Lord Cochrane, in the statement he made in that House, had asserted that the Judge, in summing up, had given that to the jury, as proved in evidence, of which no proof had been given—namely, that De Berenger had gone to him blazoned in the costume of his crime. Had it turned out that the Judge, in summing up, had made any material misstatement, this was a circumstance which would have had great weight with many. He had since read the trial with as much attention as he could read anything, and the effect of it on him was to re-establish that conviction which he at first had of Lord Cochrane's guilt.'

p. 774.

lawyers—that he had never read his brief—nay, that he had been totally careless about the conduct of his defence.

Hansard, vol. xxviii. p. 782. Sir Francis Burdett, in his answer to this, said that he had always considered the noble lord as going into Court prejudged in the mind of every man from what had transpired previously to the trial.[1] Even his Counsel seemed to be under the influence of the same feeling, as they certainly did not defend him with that ability which they might have exerted. Their defence was undoubtedly not so powerful as that employed by the noble lord himself when he moved for a new trial, if they might judge from the effect produced by it on the public mind. From his knowledge of Lord Cochrane he was sure that if he had read over the brief his head was dreaming or scheming over plans which withdrew his attention from it, and it was notorious the briefs and all legal instruments were drawn up in an incomprehensible manner. The account of the trial, which had been referred to by one member (Mr. Wrottesley), had been taken by a shorthand writer belonging to the Court and sent to the learned Judge for his revision. He did not know that any change was made in the charge, but the only way to ascertain the fact would be to examine the shorthand writer at their bar.

p. 785. The Attorney-General defended the speech of the Solicitor-General, and referring to Sir Francis Burdett's observations on the shorthand report of the trial, said it had been taken by a person known for the fidelity and accuracy of his labours. In that account an important alteration appeared in the charge of the Judge. He did not know that it had been submitted to the Judge for his revision, but he dared to say it was, as the practice was a common one for the sake of obtaining the greatest possible accuracy. The Judge might alter a phrase or a word to make that correct which before was not so, but if the hon.

[1] From the amount of printed matter which the defendants had resorted to before the trial, and especially the numerous tirades of Cobbett in his *Political Register*, it might, I think, have been rejoined that the prejudice was rather the other way. The author of *Remarks on the Case of Lord Cochrane* says (p. 17): 'Of one paper of Cobbett these parties are said to have purchased and distributed 7,000 copies.'

baronet meant to state that the noble lord wickedly altered any portion with the intent of giving a different and new meaning to what he said, or to soften down any part of it, he would venture to assert, not only from his own knowledge of that learned lord, but of all who sat upon the Bench, that there was not one of them who would descend to such a practice. Sir F. Burdett had said there was no means by which the House could judge of the evidence alluded to by the Solicitor-General; but let Lord Cochrane release his Counsel and solicitors from their professional obligations to secresy, and the House would have the necessary information.

This did not end the matter. Mr. Holmes had communicated with Lord Cochrane through a friend during the Solicitor-General's speech, and had received a letter from him which he read to the House. It asserted that the Solicitor-General was not correct, for that he had never read the briefs, although a part of them had been read to him by Mr. Parkinson, a person connected with his solicitors. The noble lord had also sent the draft brief, part of which was marked, and in the margin were the words, 'Read this to Lord Cochrane.' This memorandum, he contended, was confirmatory of the noble lord's statement. Hansard, vol. xxviii. p. 789.

The Solicitor-General said that he did not actually state that Lord Cochrane had read and seen the briefs before they had been delivered to Counsel, but what he said was that instructions had been taken from Lord Cochrane for the briefs which were read in his presence and approved of by his lordship, and that, saving the indictment and the statement of the Stock Exchange, the whole of the briefs had been prepared under his immediate inspection. And he further stated, on the authority of a person whose veracity he had no reason to doubt, that the evidence of Lord Cochrane's servants, as taken down by the attorney's clerk, was read over to him, and that he made an alteration in the evidence of Thomas Dewman. The fact that that part of the draft on the margin of which appeared the words 'Read to Lord Cochrane' was followed p. 790.

by an erasure of some lines showed that Lord Cochrane had not been inattentive.

Hansard, vol. xxviii. p. 790.

Mr. Abercromby said that Lord Cochrane's Counsel, apprehensive that he would allege neglect on their part, and more particularly with respect to the brief, had furnished him with a statement of the facts. The first part of the brief containing the statement or recitals of the case had been read over to Lord Cochrane at one period, and the second part, the proofs of the witnesses, at another period. And on the last occasion Lord Cochrane made some observations which were strictly attended to.

p 791.

Mr. Whitbread had looked over the draft brief just sent by Lord Cochrane, and had observed many lines erased which did not appear to have been read to his lordship. He deprecated, therefore, any inference being drawn from these erasures either for or against the noble lord.

On this the matter dropped; and the motion of Lord Ebrington was withdrawn with the permission of the House.[1]

The effect of this Debate was to deprive Lord Cochrane of such moral support as he had obtained from the Division list on the 5th of July, and on this occasion also we have the advantage of Brougham's opinion. In a letter to Earl Grey of the 21st of July, he writes :—

'Life and Times of Lord Brougham,' vol. ii. p. 238.

One word on Westminster before I conclude. They begin now to throw the blame on George Ponsonby and Whitbread, who, without having seen the evidence and ignorant of the whole subject, had the incredible folly to blame the Counsel for not calling the witnesses. The history of presumption offers no greater instance. *We had too good reasons for not calling them, and were I to-morrow to conduct it, I should, after the benefit of their advice, still refuse to call any of them, and so would all the profession.*

Hansard, vol. xxviii. p. 778.

[1] In a speech of Mr. Wynn's in the course of this debate, the little known fact is mentioned that not long since (in 1803) another naval officer, a captain, had been sentenced to the pillory for a fraud, and had been absolved from that ignominious punishment on the ground of his services. See Brenton, *Life of Earl St. Vincent*, vol. ii. p. 154.

CHAPTER VII

RE-ELECTION FOR WESTMINSTER

It has been already stated that Lord Cochrane was re-elected for Westminster without opposition, and was thereby, as he afterwards described it, 'rescued from a desperate and wicked conspiracy which had nearly involved him in ruin.' The action of the Westminster electors was, however, a cause of disappointment to two Whig statesmen, one of whom had reached the close, while the other was still far from the zenith of a distinguished political career. Richard Brinsley Sheridan had been a short while member for Westminster, but had been defeated in 1807 by Sir Francis Burdett and Lord Cochrane 'after a violent contest,' says Moore, his biographer, 'during which he stood the coarse abuse of the mob with the utmost good humour and playfulness.' He had re-entered the House of Commons as member for Ilchester, but in 1812 was defeated at Stafford; and in the year 1814 he was without a seat in Parliament, and had been looking forward to the vacancy which the proceedings against Lord Cochrane had for some time rendered probable as a means of going back to political life. But at that date no one who had ever been a friend of the Prince Regent's had the slightest chance for Westminster; and the circumstances under which Sheridan then found himself further prevented him from being a serious candidate. His latest biographer, Mr. Fraser Rae, informs us that at this time the Duke of Norfolk was planning to give him a seat without expense, and in confirmation of this quotes a passage from a letter written by him to the High Bailiff of Westminster: 'Never will I accept a seat in the House of Commons but on the sole condition of being

Hansard, vol. xxxviii p. 1151.

'Life of Sheridan,' vol. ii. p. 232.

master of my own vote and voice, the servant only of my conscience.' His hopes of a seat in Parliament were finally extinguished by the death of the Duke, whom he survived for only a few months.

The other would-be candidate was Henry Brougham. He, too, had been out of Parliament for some years, but his brilliant services to the Whig party, while in the House, had rendered his return very desirable, and he had cast longing eyes on the vacancy. On the 23rd of June he had been present at a banquet given at the London Tavern to the friends of Parliamentary Reform, and had taken the opportunity of defining his attitude to the Reform question, with the view to a possible candidature for Westminster. When, however, it was known that Lord Cochrane's old friends in the constituency were resolved to bring him forward again, it would have been obviously impossible for his own Counsel to have opposed him, and the project of nominating Brougham was dropped.

Hansard, vol. xxxv. p. 370.

How bitterly he felt this has been shown in a previously quoted letter, and a further allusion to that election is contained in a speech in Parliament delivered by him on the 2nd of June, 1818 (after he had been returned for the close borough of Winchilsea), where he is reported as saying:—

supra, p. 206.

> He, however, was one of those who tendered their tribute of applause to the electors of Westminster for the motives of their conduct generally in defeating the Government influence, and more especially for their humane and manly behaviour in the last election of the noble lord after his expulsion from that House. He confined himself, however, entirely to the motive which he believed influenced them in that proceeding, and which was their resentment at the infamous sentence, including the punishment of the pillory, which the Court of King's Bench had passed upon him, and but for which sentence the noble lord would not have been re-elected.[1]

[1] The *Autobiography of a Seaman*, curiously enough, omits all mention of Brougham's candidature, and only refers to the far less serious pretensions of Sheridan. Yet Lord Cochrane knew all about it, and in a debate in the House taunted Brougham on his having been a candidate for Westminster. (*Hansard*, vol. xxxv. p. 370.)

Compare 'Life of the 10th Earl of Dundonald,' vol. i. p. 45.

A great public meeting of Lord Cochrane's supporters was held in the Palace Yard on the 11th of July, and Sir Francis Burdett, the sitting member for Westminster, in proposing Lord Cochrane's re-election, showed a fine disregard of the true facts of the trial as revealed in the House of Commons a week previously. He accepted Lord Cochrane's statement as gospel, and even added a few misrepresentations of his own. The question, he said, was whether an innocent individual should be destroyed by the machinations of corruption and power. Lord Castlereagh [1] had prevented the people from reading Lord Cochrane's defence, and had imposed silence upon the corrupt and degraded press that was still suffered to exist in this country. He would not now find fault with the jury that tried Lord Cochrane, who were, as he was informed, very respectable persons,[2] but he should find fault with that mode of picking out the jury which Lord Cochrane had called packing them. *He did not mean to find fault with the verdict which they found upon the evidence that was laid before them*, evidence which was so skilfully and so artfully got up against him by those who had the arrangement of the prosecutor's case, and which had been so feebly met by those who undertook the defence of Lord Cochrane. He repeated the story, already exposed by Sir William Garrow and others, that Lord Cochrane had been prevented by the rules of law from having the opportunity of getting his case retried, and said that the noble lord had certainly charged the noble and learned Judge who tried him with a false statement of the facts of the case, and with a gross misdirection to the jury; but Lord Cochrane's real crime was his bold and independent conduct in the defence of their rights and liberties.

'Times,' July 12, 1814. 'Autobiography,' vol. ii. p. 436.

Alderman Wood was amongst the numerous speakers, and informed the meeting that he had heard from one of the jury (who had assured him that others of that jury were of the same sentiment) that had the evidence since

[1] As a matter of fact it was the Speaker who first intervened and attempted to moderate Lord Cochrane's language (*supra*, p. 196).

[2] This is very different from Lord Cochrane's description of them.

produced been brought forward upon the trial, or had Lord Cochrane been in Court and made his own defence, it would have been impossible to have found him guilty. If necessary he would bring the individual alluded to before them. Apparently the meeting did not think it necessary, for this juryman, a familiar figure in all cases where the verdict fails to give satisfaction, was not brought forward, and preserves his anonymity to the present day; and it is important to observe that this allegation, whether warranted or not, fails to give any support to the statement in Lord Cochrane's affidavit that the jury were so exhausted by extreme fatigue as to prevent them doing justice.

On the 16th of July Lord Cochrane was returned as member for Westminster.

This digression, which is necessary in order to follow the chronological sequence of events, has interrupted the narrative so far as it relates to the controversy between Lord Cochrane and his solicitors. Their statement, made known to the House of Commons during the debate on Lord Ebrington's motion, had been extremely damaging to Lord Cochrane, and on the 25th of July he wrote to Messrs. Farrer, saying that, in consequence of what had passed in the House of Commons, he felt it his duty to call upon them as his solicitors for an answer to the questions which he enclosed. These were some thirty-four in number, and many of them involved and intricate. They will be found printed in the 8th Appendix to the 2nd volume of the 'Autobiography of a Seaman' (where they are taken from the 7th Appendix to the 'Letter to Lord Ellenborough'). I give a sample:—

'Autobiography,' vol. ii. pp. 482–8. Compare *supra*, p. 135.

Was not the description of De Berenger's dress as contained in my observations, endorsed by you 'Minutes of the case,' namely, 'a grey great coat, without any trimming, and a green coat, or a coat with a green collar under it,' understood by you to have reference to what could be proved only, and not to imply a doubt in my mind as to the colour of the under coat, but merely to intimate that the witnesses might only be able to speak to the colour of the collar on account of the body of the coat being concealed by the great coat?

Did you not particularly question Thomas Dewman and Mary Turpin as to the colour of the under coat? Did you not expressly ask them whether it was a red coat? and whether they could swear that it was not a red coat? which they could not, because it was worn under a great coat which was buttoned up.

Was it not in consequence of repeated questions that they were induced to admit that the under coat might be red? Did either of my servants admit that any part which he or she *saw* of the under coat was red?

Did you not, in consequence of the examination of my servants, insert in the brief that the under coat worn by De Berenger was a red coat with a green collar?

Did you ever call my attention to that part of the brief by word or letter? And do you really believe that I was privy and consenting to the fact of my Counsel being authorised by the brief to admit that coat to be red, which I uniformly declared to you was green, and which I had sworn to be green?

Did you read the whole of the brief to me, or merely detached parts? Did I peruse it myself in your presence or to your knowledge? Did you ever previous to the trial furnish me with a copy of it?

Did you ever call the attention of the Counsel, by word or letter, to the difference between the statement in the brief and affidavits of myself and servants, respecting the dress of De Berenger? When did the Counsel, to the best of your belief, discover that difference?

To this the solicitors replied on the 3rd of August, that after what had passed, and the communications they had already made, they hoped his lordship would agree with them in thinking that it would be highly improper in them now to answer any more abstract or partial questions. 'We have, agreeably to your uncle's desire, made out, and now beg leave to enclose you our bill on that business, in which you will find most of the facts to which your questions relate stated as they occurred.'

'Autobiography,' vol. ii. p. 484. Letter to Lord Ellenborough, App. vii.

This bill was never published by Lord Cochrane; if it were ever to see the light in its entirety it would possibly put an end to many of the questions which are still in dispute with regard to the trial. Some of the items, however, relative to the conferences between Lord Cochrane and his

solicitors, and between the latter and the Counsel, on the subject of the joint defence, have appeared in the pages of the 'Law Magazine and Review,' and I have given them in their order in this narrative. They certainly do not bear out either Lord Cochrane's statements of fact or his charges of negligence.

Vol. xi. pp. 198, 195, and *supra*, pp. 55, 60.

p. 197.

The same periodical has also printed the statement prepared by Messrs. Farrer in answer to Lord Cochrane's attack on them, on the 5th of July, in the House of Commons, and which was referred to, if not read verbatim, by the Solicitor-General in the debate on Lord Ebrington's motion. In spite of its length, it is so important that, as the source in which it appeared is only accessible to the frequenters of the legal libraries and the British Museum, I think I am justified in inserting it here verbatim.[1]

supra, p. 209.

Lord Cochrane having, in a statement prepared for the purpose of being read by him in the House of Commons on Tuesday next (a copy of which is herewith left), charged us with irregularity and neglect of duty in preparing the brief, and taking the examination of witnesses for the late trial, we feel ourselves compelled, with the greatest regret, to submit the following facts and make the following declarations in justification of our conduct, as far as relates to the different matters charged against us by his lordship :—

1st. With regard to the irregular manner in which Lord Cochrane alleges the brief to have been drawn up by us as his solicitors, we beg to observe that the whole of the statement contained in it (except the pleadings, the Stock Exchange Committee's report, his lordship's affidavit and the proofs) was drawn out in his lordship's presence, and afterwards read over to and approved of by him.

2nd. With regard to the affidavits made by Thomas Dewman and Mary Turpin on the 21st of March, and which his lordship states to have been sworn at the Mansion House, in the presence of one of our clerks, we have to make the following declaration, viz. :—

[1] The other documents on this part of the case are all to be found in the 2nd volume of the *Autobiography of a Seaman*. There is a set of the *Law Magazine* and *Review* in the London Library. These articles were also reprinted in 1877 by the late Hon. H. S. Law, who appended a preface to them (see p. 375, *infra*).

That on the morning of Sunday, the 20th of March, Lord Cochrane called in Lincoln's Inn Fields, and requested we would immediately send a stationer's man or a clerk to write for him in Green Street. That, agreeably to his lordship's request, one of our clerks waited upon him in Green Street about half-past two o'clock, and was employed there from that time till a quarter before six on that day, in writing by his lordship's dictation, from some minutes or papers he had before him (but not in the presence of the witnesses), four affidavits, to be sworn by Thomas Dewman, Mary Turpin, Isaac Davis, and Sarah Colton,[1] his servants, and afterwards making copies of the affidavits for his lordship. That when the affidavits and copies were finished, Lord Cochrane kept the copies, but ordered the clerk to take the affidavits home with him, and desired that either he or some other person would attend the witnesses to the Mansion House for the purpose of getting them sworn. That on Monday morning, the 21st of March, Thomas Dewman, Mary Turpin, and Isaac Davis called in Lincoln's Inn Fields, and the same clerk who attended his lordship the day before sent them to the Mansion House, and afterwards followed them there and got the affidavits sworn, Davis having previously read over his own affidavit, and the clerks having read over to Thomas Dewman and Mary Turpin their affidavits; and that the three affidavits, when sworn, were sent to Lord Cochrane's, and afterwards published by him.

3rd. With regard to the examinations of Thomas Dewman and Mary Turpin, as taken by us on the 11th of May, and stated in the brief, being different from their affidavits sworn on the 21st of March, we declare that those examinations were taken from the witnesses separately, and in the usual manner, by requiring them to state fully and correctly, and as they would be able to prove on oath at the trial, all they knew or recollected respecting De Berenger's coming to Lord Cochrane's house in Green Street, and the dress he appeared in there on the 21st of February, and by taking down every circumstance as they stated it; but certainly without pointing out or referring them either to Lord Cochrane's affidavit or their own affidavits sworn the 21st of March. That the examinations were afterwards read over to the witnesses separately and approved of by them. And we further declare that the examinations so taken were afterwards read over to Lord Cochrane, who made no objections to any part thereof, except to one part of Dewman's examination,

[1] Presumably the same as Sarah Busk.

which alluded to another officer who had been at his lordship's house in Green Street, not on the 21st, but on some other day, and in consequence of his lordship's objection that part of the examination was expunged, and not inserted in the brief delivered to Counsel.

4th. With regard to what Lord Cochrane states, that Dewman and Turpin, upon being subsequently asked how they came to state to us, as his lordship's solicitors, that the under coat was red, they replied they never had said so; we most positively assert that when that question was put to Thomas Dewman after the trial, on his being sent by Lord Cochrane to make a further affidavit for the purpose of applying for a new trial, his answer was, not that he never told us that De Berenger came to Green Street in a red coat, but that, when he was before examined by us, he must have concluded the under coat was red, because De Berenger appeared to be a military officer.

5th. With regard to that part of Lord Cochrane's statement in which he alleges that we, as his solicitors, in drawing up the proofs attached to the brief for the information of his Counsel, copied from the public prints his lordship's affidavit, dated the 11th of March, and published in almost all the papers of the 12th and 23rd of March, but that, instead of copying also the affidavits of Thomas Dewman and Mary Turpin, dated the 21st and published on the 23rd of March, we examined those persons and entered up the result in the proofs annexed to the briefs, which flatly contradicted his lordship's affidavit, and that, notwithstanding that circumstance, we omitted to call his lordship's attention, or that of his Counsel, by LETTER to that most essential point, we take leave to submit that it was absolutely necessary to state Lord Cochrane's affidavit in the brief, because it might be made use of as evidence against him by the prosecutors, but that it was unnecessary to state the affidavits of Thomas Dewman and Mary Turpin, because they must be examined personally at the trial; and that, as both his lordship's affidavit and the testimony of Thomas Dewman and Mary Turpin, as taken down by us, were copied, the difference between the two, as far as related to the colour of De Berenger's under coat, was apparent upon the face of the brief, although we admit we never distinctly called his lordship's attention, or that of his Counsel, to that point by *letter*; and we further beg to state that in the affidavits sworn to by Dewman and Turpin, on the 21st of March, they did not state what the colour of De Berenger's under coat was, but only that the collar of it was green, which

was not contradictory to what they stated to us on their examination.

Lastly, with regard to the orders Lord Cochrane states to have given to us for the examination of Dewman and Turpin, we beg to state that every direction we received from his lordship on this subject was communicated and submitted to Counsel, and particularly his lordship's letter of the 9th of June, received in Court during the trial. *supra*, p. 155.

Lord Cochrane did not publish his bill of costs; he did, however, on the 10th of August issue an address to the electors of Westminster, now once more his constituents, in which, while ignoring much of the explanation given by Messrs. Farrer, he formally reiterated his accusation of gross dereliction of duty. He admits that the solicitors may have read the greater part of the brief over to him, though he has no recollection of the fact, but he still asserts that his attention was never called by them to the fact of De Berenger's coat being described as of a different colour to what he had sworn in his affidavit.

'Autobiography, vol. ii. p. 454.

It is impossible that this most important difference could have escaped their observation, and yet it is true that they never called my attention to it. I may affirm without fear of being contradicted that I did not know that the dress of De Berenger, which I had sworn to be green, was in any part of the brief, much less in the examination of my servants, described to be red, because it is impossible, unless I had been absolutely insane, that I should not only have been satisfied with a brief which authorised my Counsel to contradict my own affidavit, but have been anxious to send my servants into Court to give evidence against me on that point. . . . .

p. 457.

To come now to the manner in which the error in the brief originated, I have no hesitation in acknowledging that I am at issue with my solicitors on that point. Their account is that two of my servants, whom I had sent to their office to be examined as to the evidence they could give on the trial, admitted that De Berenger wore a *red* coat with a green collar. My servants, on the contrary, assure me that they did not, and could not, admit that it was a red coat, because when they saw De Berenger he wore a great coat buttoned up, and they saw neither the body nor the skirts of the under coat, but the collar, and so much of the breast as they saw was green; but they admit that on being

questioned by my solicitors whether they could swear that it was not a red coat, they confessed that they could not,[1] and admitted that it might be red, and that the green which they saw might be green facings to a military coat; but they have constantly declared that no part which they saw was red, and they deny that they ever admitted that they saw any red.

And here the matter must be left; there is absolute contradiction between Lord Cochrane's version of his attitude towards his defence and that given by Messrs. Farrer. Until their bill of costs is published in its entirety we shall never be able to say with certainty what was the actual truth; so far as the extracts published in the 'Law Magazine and Review' go, they are fatal to many of Lord Cochrane's contentions. While, however, it is impossible to reconcile the stories told by Lord Cochrane and by his solicitors, there is no such difficulty with the alleged discrepancy between the affidavits of the servants and their proofs in the brief. In the affidavits they say that De Berenger's collar was green; in their proofs they repeat that the collar was green, but add that the coat was red. They had been submitted to a careful examination by a highly skilled solicitor, a man whose long experience would tell him what their evidence would be likely to amount to at the trial, and how far they could stand cross-examination. His conclusion seems to have been that they would be unable to corroborate Lord Cochrane's statement as to the colour of De Berenger's coat, and the Counsel,[2] on their final consultation on June 6th, were of opinion that no witnesses should be called. Apart from the high reputation of the men giving this opinion, it is obvious to any one

[1] Could any stronger vindication of the impropriety and danger of putting such witnesses into the box be desired?

'Autobiography,' vol. ii. p. 456.

[2] If confirmation of the statement of Messrs. Farrer on this point is required, it is to be found in the *Autobiography of a Seaman* itself: 'From an item in my solicitor's bill, dated June 6th, I extract the following: "Attending a consultation at Mr. Serjeant Best's Chambers, when your case was fully considered, and all the Counsel were decidedly of opinion that you must be defended jointly with the other defendants, and the Counsel recommended your servants being in attendance on the trial, *although they still remained of opinion that neither they nor any other witnesses ought to be examined on your part.*"' See also Brougham's letter, *supra*, p. 212.

that a breakdown on the part of a single witness as to the colour of the coat would have been most damaging to the case. 'Had the servants wavered or been, as probably was the case, really uncertain as to the fact in question, or had they on cross-examination differed from each other, or admitted that the colour "might have" been red, the consequence would have been at once fatal.'

'Law Magazine and Review,' vol. xi. p. 196.

In another part of this address Lord Cochrane 'freely releases his solicitors and Counsel from every obligation of secresy,' and he repeats his assertion made in the House of Commons that at the trial he considered Topping and Scarlett to have been his own Counsel, and fully expected them to have spoken in his defence, whereas Serjeant Best, contrary to his expectation and direction, defended his cause in conjunction with that of his own client, Mr. Cochrane Johnstone. This is hardly credible, nor is it consistent with a note appended to this passage in the 'Autobiography,' where he admits having finally acquiesced in the joint defence, though having held out against it to the last. On a previous page I have detailed the circumstances under which the joint defence was resolved upon. It must be left to the reader to decide whether Lord Cochrane, after acquiescing in it, even if he did so unwillingly, could really have believed that Topping and Scarlett, or either of them, could have made separate speeches on his behalf.

'Autobiography,' vol. ii. p. 456.

CHAPTER VIII

THE LETTER TO LORD ELLENBOROUGH

LORD COCHRANE employed the first few months of his imprisonment in the preparation of a vindication of his innocence, taking the form of a letter to Lord Ellenborough. The letter was published early in 1815, and forms a somewhat bulky pamphlet, containing 138 pages of text, with appendices extending to forty pages more; it was sold at the price of 5*s*., and is dated the 21st of December, 1814.

Letter to Lord Ellenborough

The reception which the House of Commons had given to Lord Cochrane's vituperative address on the 5th of July had for the moment produced an effect on him, and though the letter abounds in complaints of the Lord Chief Justice's conduct, and attacks for his alleged unfairness and partiality, they are couched in perfectly decent language. He abandons the charge against him of having falsified the revised edition of his summing-up, and contents himself with asserting that even in Gurney's report it is objectionable and not warranted by the evidence. On this point it may be observed that in 1814 Lord Ellenborough had been on the Bench for twelve years, and had been in the habit of taking notes of evidence nearly every working day during that period. No notes can be infallible, but, taking into consideration the practice and training of the Lord Chief Justice, I do not think it follows that, in cases of slight difference between his notes of the evidence and those taken by the reporter, Lord Ellenborough should always be the one at fault.

Practically a considerable part of the letter is an abstract of the way in which Lord Cochrane would have summed up his own case, and, regarded as such, it is no

doubt a very cogent version of the evidence. Divers views of the duty of a Judge in summing up a case will always be taken, but no one will be found to dispute that the person least capable of forming a reliable opinion is the litigant or prisoner against whom the verdict has gone.

I cannot do better than quote on this point the observations of a writer in the 'Quarterly Review,' whose article I have had occasion already to refer to, as expressing my opinions far better than my own words would do. 'It may be a matter for argument how definitely a Judge is bound or entitled to place his own opinion upon the whole case in full sight of the jury to whose verdict the prisoner's destiny is given in charge, but few frequenters of courts of justice will deny that the most futile and unsatisfactory method of charging a jury into which a Judge can fall is that which recapitulates the evidence, without fully pointing out the conclusions to which it must naturally lead.' The same writer adds, 'Neither in Lord Ellenborough's recapitulation of the evidence from the notes, nor in the comments made by him upon its effect, do we find any statement or any omission which bears the colour of harshness, prejudice, or unfairness.' Vol. cix. p. 404.

No judicial summing-up of modern years is more justly celebrated than that delivered by the late Sir Alexander Cockburn in the trial at Bar of the Tichborne claimant. Its delivery occupied twenty days, during which period it became the subject of some unfriendly criticism. On the last day of the trial, Saturday, the 28th of February, 1874, Sir Alexander appealed to the jury in terms which not only lay down the true theory of the principles on which a judge's charge should be based, but are appropriate in an extraordinary manner to the charge delivered by Lord Ellenborough in the case which forms the subject of this book.

'I have sought to lay before you all the facts connected 'with the case fairly, truthfully, and impartially, but never- 'theless with a stern sense of the duty which was incumbent 'on me to discharge. I have been assailed from without by 'abuse from critics who entered upon the inquiry with a

'foregone conclusion, and with the belief, I suppose, that 'they know my business better than I do. I have been 'abused for placing the case before you, it is said, in a 'partial and one-sided manner. Gentlemen, I cannot invent 'facts, and I cannot, with the utmost efforts of ingenuity, 'find explanations which have no reality in point of fact. 'In my opinion, a judge does not discharge his duty who 'contents himself with being a mere recipient of evidence, 'which he is afterwards to reproduce to the jury without 'pointing out the facts and the inferences to which they 'naturally and legitimately give rise. It is the business of 'the judge so to adjust the scales of the balance that they 'shall hang evenly. But it is his duty to see that the facts 'as they arise are placed in the one scale or the other, 'according as they belong to one or the other. It is his 'business to take care that the inferences which properly 'arise from the facts are submitted to the consideration of 'the jury, with the happy consciousness that if he go wrong 'there is the judgment of twelve men having experience in 'the everyday concerns of life to set right anything in 'respect of which he may have erred. But if the facts are 'such that, placed in the scale to which they respectively 'belong, the one scale kicks the beam and the other goes 'down, the fault is in the nature of the thing, and not in 'the conduct of the judge. If converging from one point 'the footsteps concentrate in a common spot, and on that 'spot stand, and if when measured their measure corresponds 'with the foot-tread of the accused, it is the business of the 'judge to take care that the fact shall be brought to the 'mind and attention of the jury.'

A great portion of the letter is devoted, not unnaturally, to the colour of the uniform worn by De Berenger on his visit to Green Street, and a long chain of argument is adduced in favour of the statement in Lord Cochrane's affidavit that it was green. While it is suggested that De Berenger might have changed his uniform from red to green, either in the hackney-coach or in the house in Green Street, the writer declares in favour of the change having

been effected in the *post-chaise* during the last stage, and probably between the coach-stand at the 'Three Stags,' Lambeth Road, and that at the Marsh Gate (p. 11).[1] In support of this contention a great deal of evidence, part of which had been given at the trial, and the rest brought forward subsequently to it, is quoted, and Lord Ellenborough is charged with suppressing the former in his address to the jury, and with assuming as beyond all question that De Berenger appeared before Lord Cochrane in the full panoply of Du Bourg.

As a charge of injustice and oppression against Lord Ellenborough all this is utterly futile. At the trial, as will be well remembered, such a line of defence was expressly abandoned. Not only did Serjeant Best refrain from calling evidence in support of it, but he tried to explain away what he called Lord Cochrane's mistake in representing the coat as green in his affidavit; and this was the ground of Lord Cochrane's application for a new trial on the 14th of June. The responsibility for the

[1] The distance was only a few hundred yards, and from the evidence of Barwick the chaise had apparently not checked its pace: 'I observed a post-chaise with four horses; it had galloped at a very great rate; the horses were exceedingly hot.' A post-chaise, drawn by four horses, swaying along over a jolting road, was not a favourable situation for a man whose hands were numbed with cold to effect a rapid change of costume. Curiously enough, in another part of the *Letter*, at p. 73, Lord Cochrane shows the difficulty of effecting this change in a short time. He is there engaged in showing that on the hypothesis, which he rejects, of the change having been effected in the house in Green Street while his servant was absent, fetching him from the City, there would have been plenty of time for De Berenger to do what was necessary. 'And certainly,' he says, 'there were so many things to do before a change of coats could be thoroughly performed that it would unquestionably have been a work of time. De Berenger would have had to take off his grey great coat, to open his portmanteau, to take out his green coat, to take off his scarlet coat, to put on his green coat and his grey great coat, to replace his scarlet coat in the portmanteau, and strap it up before the operation could be fully effected.'

At the Trial, Shilling, the post-boy, had sworn that De Berenger had pulled up the side blind of the post-chaise as he came round the corner between the coach-stands at the 'Three Stags' and the Marsh Gate, and Lord Cochrane insists (*Letter*, p. 12) that the probability was that it was in order to conceal himself for the purpose of changing his dress. Is not an equally probable reason supplied by the fact that he was then passing in the neighbourhood of his own lodging in the Asylum Buildings, and wished to escape observation?

Trial, p 121, *supra*, p. 92.

course pursued by Serjeant Best must remain with the Counsel and solicitors, and it is little short of monstrous to impute partiality to Lord Ellenborough because he put to the jury and proceeded to comment on the very case which had been previously presented to them for the defence. This remark is so obvious that I should be ashamed to make it were it not that this assumption of De Berenger's coat being red has been adduced over and over again as a proof of Lord Ellenborough's zeal in pressing home every point against the defendants. Let me again quote the words of the 'Quarterly Review':—

Vol. cix. p. 405.

In regard of the specific issue of fact upon the colour of the uniform, and the inferences to be drawn from that colour, Lord Ellenborough could not, consistently with his duty, have charged less forcibly or clearly than he did after the course taken by Serjeant Best. The gauntlet had been thrown down upon one particular issue as the crux of the case against Lord Cochrane personally. The defending Counsel, with the fullest knowledge and in the exercise of the most deliberate discretion, had refused to join issue thereupon, and virtually admitted the statement of the prosecution, with all the consequences it might logically involve. There was no course open to the Judge but to take what was so admitted, against the interest of the defence, as a matter of fact incapable of disproof.

While on the subject of the dress it is worth while observing that the green coat said to have been worn in Lord Cochrane's house by De Berenger is now asserted by Lord Cochrane not to have been part of the uniform of the Duke of Cumberland's sharp-shooters. It had, he says, no crimson collar; it was in other respects different from that described by Lord Yarmouth at the trial, and must have been an uniform made for the occasion (*i.e.* to drill the riflemen on board the *Tonnant*[1]), but he is still clear that

Letter to Lord Ellenborough, p. 74.

[1] 'I had no distinct idea whether the coat and the cap were really the uniform of Lord Yarmouth's corps or not; but when he told me that he could not with propriety wait on Lord Yarmouth in that dress, I naturally conceived that, as he had prepared himself to go on board to exercise the sharp-shooters, and came to see me for that purpose, it might be a dress made for the occasion.'

Letter to Lord Ellenborough, p. 75.

it was an uniform. At another stage it will be found to have undergone a still further transformation, and have become an ordinary green morning coat.

See *infra*, p. 268.

The later pages of the pamphlet contain some very interesting matter as to the defence which Lord Cochrane says ought to have been put forward to account for the compromising fact that some of the notes which were found on De Berenger were traced back as the proceeds of others which had been in the hands of Lord Cochrane. An outline of it had already been given in his speech in the House of Commons.

It will be remembered that the notes found on De Berenger were identified beyond all question at the trial as being a portion of the produce of a draft for 470*l.* 19*s.* 4*d.* paid to Lord Cochrane on the 19th of February by Smallbone, the broker, and that part of the payment of this draft was in one 200*l.* and two 100*l.* bank notes, which were on the 24th of February changed by the clerks Lance and Christmas into the 1*l.* notes, some of which were eventually found on De Berenger.[1]

Trial, pp. 231–247, *supra*, pp. 115–121.

Lord Cochrane in the first place charges Lord Ellenborough with unfairly representing this transaction, and he quotes his words:—

Letter to Lord Ellenborough, p. 106.

> Originally the 470*l.* draft had been laid down before and paid to Lord Cochrane; it had afterwards got into the hands of Mr. Cochrane Johnstone and of Mr. Butt, for there appeared to be such a communication between the parties that you cannot say from whom ultimately it proceeded, but it had been in some sort in the hands of all, and the produce of this cheque, originally paid to Lord Cochrane, is found in the desk of De Berenger.

Trial, p. 480, *infra*, p. 485.

To this Lord Cochrane replies, first of all, that the original draft of 470*l.* was never in the hands of Mr. Butt, and was never even seen by Cochrane Johnstone; nor, he

[1] Lord Cochrane says that Butt explained to him the double process of changing the 200*l.* note by the mistake of a clerk who was told to get 'ones,' and got 'one hundreds.' We are entitled to ask why this question was not put to the clerk, who must have been Christmas.

Letter to Lord Ellenborough, p. 105, *n.*, *supra*, p. 120.

says, was there the slightest evidence or ground to conjecture that after Butt had received the 400*l.* from him, and after the notes had been changed at the Bank for 1*l.* notes at Butt's instance, a single one of these latter was ever returned to him (Lord Cochrane) or passed from his hands into those of De Berenger.

Letter to Lord Ellenborough, p. 110.

In the second place he proceeds to account for the fact of his having paid the 400*l.* over to Butt, and this is his story.

On the 15th of February he had occasion to borrow 200*l.* from Butt under circumstances which will be immediately related, and on the 19th he received the draft from Smallbone for 470*l.*, and repaid Butt in the two 100*l.* notes. On the same day he gave an order for wine for the *Tonnant*, amounting to upwards of 700*l.*, to Messrs. Wilkinson & Crossthwaite, and on the 22nd or 23rd he entrusted Butt with the sum of 1,200*l.*, including the 200*l.* note (No. 634), for the payment of this and other of the ship's bills. On the 24th Butt appears to have passed the two notes of 100*l.* each and the note of 200*l.* to Cochrane Johnstone, and on the 8th of March Butt paid the wine bill.

p. 111.

Returning to the history of Smallbone's draft and the 200*l.* loan from Butt, Lord Cochrane says that on the 15th of February Smallbone had purchased for him 5,000*l.* Omnium for money, but that on arriving in the city and finding he had not the purchase-money with him, he directed the stock to be sold; 1,000*l.* was accordingly disposed of at a loss of 20*l.*, when Butt came into the office, and, to save the loss on the remainder, undertook to procure the requisite sum. The price of the 4,000*l.* Omnium which remained had been 3,505*l.*, and to make up this sum Fearn gave a draft for 2,000*l.*, and Lance for 450*l.* Butt himself paid 200*l.*, Lord Cochrane 43*l.* 10*s.*, and Smallbone made up the difference, 811*l.* 10*s.* On the 17th Smallbone sold on Lord Cochrane's account 2,000*l.* India bonds [1] and

[1] These Indian bonds fetched, according to the account in App. v. to the *Letter*, 2,043*l.* 14*s.* 4*d.* According to the *Times* the premium on India bonds on that day varied from 6 to 7 and 8. At 106, 2,000*l.* bonds ought to have fetched 2,120*l.* In App. v. we are further told that Lord Cochrane

2,000*l.* Omnium, producing 3,758*l.* 14*s.* 6*d.* After repaying the various sums borrowed from Fearn, Lance, and Smallbone, and deducting the loss of 20*l.* on the sale of the 1,000*l.* and a commission of 6*l.* 5*s.*, there remained a sum due to Lord Cochrane of 470*l.* 19*s.* 4*d.*, for which Smallbone gave him the draft, with the proceeds of which he immediately repaid Butt his 200*l.*

This transaction is apparently referred to by Lord Cochrane in the minutes furnished to his solicitors for drawing up his brief, in the following terms:—

On Lord Cochrane directed Messrs. Lance and Smallbone to purchase for him 5,000*l.* Omnium for money, but on going to the office with the intention to pay for it he found that he had neglected to bring the necessary sum, and having only about 50*l.* with him he borrowed of Messrs. Fearn, Lance, and Smallbone a sum equal to the deficiency, except 200*l.* which was lent to his lordship by Mr. Butt. Mr. Fearn was repaid on the following day by the sale of the Omnium, Lord Cochrane having given orders to sell it, in the event of his not being able to come into the city, which was the case. Messrs. Lance and Smallbone repaid themselves, and Lord Cochrane returned Mr. Butt the 200*l.* when he received the balance on Saturday, the 19th.

App. vii. reprinted in 'Autobiography,' vol. ii. p. 481. See also App. v. The date is left blank in the original.

This part of the case, then, was known to Lord Cochrane's legal advisers, and must have been incorporated in Counsel's briefs. Fearn, Lance, and Smallbone were all called by the prosecution, and in Lance's cross-examination by Scarlett the transaction is touched upon, but very tentatively, so much so that in the 'Letter' Lord Cochrane complains that 'from the imperfect way in which the witnesses were examined at the trial it was not made to appear that Butt conducted the whole transaction.' After all Lance was only a clerk; the two principals were Fearn and Small-

sup., p. 117.

Letter to Lord Ellenborough, p. 112.

sold on Feb. 2 2,000*l.* Omnium at 28½. Now, according to the *Times* and *Morning Post*, Omnium never appears to have been above 27½ on that day. The Omnium accounts, as given in the letter to Lord Ellenborough, only work out correctly when 40 per cent. is deducted from the amount of stock sold—*i.e.* 400*l.* from every 1,000*l.* sold. These points may be capable of explanation, but at present I cannot suggest any theory which admits of the correctness of these accounts. (See also the *Review of the Case of Lord Cochrane*, p. 69.)

bone, and it seems strange that they (and Smallbone especially) were not asked a single question by Scarlett or Best to clear up so important a matter. When we come to Best's speech there is no attempt made to adopt this theory, and Lord Ellenborough cannot be blamed for declining to suggest out of his own head an explanation to the jury which Lord Cochrane's advisers seem deliberately to have rejected.

But the explanation given in the letter with regard to the 200*l.* note is still more important as showing that, so far from unduly pressing points against Lord Cochrane, Lord Ellenborough passed over without comment a portion of the case very damaging to him. All those who read Serjeant Best's speech must have been struck with the fact that he makes no effort to deal with the produce of the 200*l.* note; he simply waives it away and devotes himself to giving the best explanation he can of the circumstances attending the fate of the two 100*l.* notes. We have seen that Lord Cochrane explains that the 200*l.* note was paid to Butt in part discharge of a wine bill, and I think it better to give his story in its entirety.

See *supra*, p. 140.

Letter to Lord Ellenborough, pp. 114-5.

Of the similar app cation of the note of 200*l.*, also the produce of the above-mentioned cheque, I was equally ignorant, and for a still longer period. It was not till very shortly before the trial that I had the least intimation or idea that the produce of that note had also been traced to De Berenger, *and it was not even attempted to be accounted for at the trial*, because it was not till after my arrival at this place [1] that I could call to mind in what manner that note passed into the hands of Mr. Butt. I am indebted to my uncle, the Hon. Basil Cochrane, for urging my recollection on this subject, and particularly putting the question whether I had not at any period subsequent to the 19th of February deposited in Mr. Butt's hands any money for the payment of my ship bills. And I was then 'struck as by electricity' with the recollection of the fact of having paid into his hands a thousand-pound note and a *two-hundred-pound note* for that express purpose. By documents tendered to the House of Commons, and which are now annexed to this letter, it is proved that Mr. Butt did accordingly, on the 8th of March, pay

[1] King's Bench prison.

to Messrs. Wilkinson and Crossthwaite nearly seven hundred pounds for wines shipped on my account on board his Majesty's ship *Tonnant*.

This explanation, it may be added, not only shows Lord Ellenborough as abstaining from comment on a part of the case where it might well have been expected, but liberates Lord Cochrane's legal advisers from suspicion of negligence or carelessness with regard to it, while it shows over what very thin ice Best had to proceed in his conduct of the case and his address to the jury.

There is little more to be said with regard to the 'Letter to Lord Ellenborough,' though it is well worth a careful perusal. At p. 118 he says that the memorandum found on De Berenger was very strongly in favour of his (Lord Cochrane's) innocence, and yet that Best was obliged by his duty to his other clients to content himself with saying, 'That cannot be evidence against the Cochranes,' whereas it ought to have been put much more strongly as an absolute proof of the innocence of that one of them—namely, Lord Cochrane—who was not mentioned in it. And he cites it as 'a striking proof of the injustice done me in endeavouring to "link me inseparately" to Mr. Johnstone by blending the defence contrary to my positive instructions.' At p. 122 he says he has a distinct and perfect consciousness of never having speculated with a view to the 21st of February or to any particular day, and at p. 124 he says that the Judge 'might have commented a little upon the inequality of the different accounts, and upon the improbability of an illicit partnership in which the danger of each was the same, while the respective objects were so disproportionate.' At p. 125 he makes a very curious statement. 'The arrival of a pretended officer in a post-chaise and four at the Marsh Gate, on the morning of the 21st, three hours previous to the arrival of De Berenger with precisely the same news, and his proceeding immediately to the Admiralty, are facts which I think I could not fail to establish by evidence now in my possession.' I have been unable to find anything that could throw light on this

See Trial, p. 224, *supra*, p. 114.

statement, and it is to be regretted that Lord Cochrane never did establish these facts, if, as he says, he had the evidence. It seems a perverted account of the undoubted fact that De Berenger was forestalled in getting up to London by messengers from Dover.[1]

Lastly, Lord Cochrane attacks the Chief Justice for his conduct with regard to the adjournment, and for what he calls his frivolous and pretended reasons for 'dividing the cause between the defence and the evidence.' This, as will be seen, formed the first of the articles of charge afterwards brought against Lord Ellenborough in the House of Commons, and it will find its proper place in a subsequent chapter.

infra, p. 242.

The pamphlet contains a number of appendices, one of which, Lord Cochrane's letter to the electors of Westminster, with its accompanying documents, is reprinted in the 'Autobiography of a Seaman.' He also prints (Appendix I.) an extract from a bill of Messrs. Farrer & Co., relative to the specification for his lamp patent; it seems a pity that he did not at the same time publish their full bill of costs, which must have thrown light on many questions connected with the trial which seem destined to remain for ever in obscurity. Appendix VII. contains two affidavits sworn on the 22nd of July, by Lambeth tradesmen, who assert that they saw De Berenger step from the post-chaise into the hackney-coach at the Marsh Gate, and that he was then dressed in green with a grey coat; and affidavits by other persons tending to impugn the credibility of Crane, the hackney-coachman. One of these latter (James Yeowell) swore that Crane admitted having received a part of the reward offered by the Stock Exchange, and expected more, while another (James Lovemore) said that a few days after the 21st of February

[1] A little further on a foot-note contains an obscure allusion to the Lord Chief Justice and the Cabinet, which may be the foundation of a strange blunder in the 'Autobiography of a Seaman' which is exposed in a later chapter. 'If the Lord Chief Justice had not a seat in the Cabinet might it not have been polite in the Ministry to have ascribed the failures on the lakes to his lordship's change of opinion?' The reference is to our defeat on Lake Champlain in the American War, Sept. 11, 1814.

Letter to Lord Ellenborough, p. 128, *n.*

See *infra*, p. 356.

Crane had informed him that he had told the Stock Exchange Committee that the person driven by him from the Marsh Gate was no other than Lord Cochrane himself.

On the use or abuse made of these affidavits in the 'Autobiography of a Seaman' I shall take occasion to comment in a later chapter. It is sufficient here to say that for any practical purpose they were too late. The story of the Lambeth tradesmen was in conflict with all the evidence at the trial, and, as will be seen immediately, much of the rest is flatly contradicted by the Committee of the Stock Exchange. There had been too much swearing of affidavits previous to the trial to predispose the public to look favourably on those sworn after it.

While the letter to Lord Ellenborough was passing through the press, the Stock Exchange sub-Committee appointed to inquire into the fraud had printed, for the use of the members, on the 27th of January, 1815, a further report, intended as an answer to attacks made upon them in the newspapers and elsewhere, and particularly in the House of Commons.

After stating that their efforts to detect the parties concerned in the fraud had been attended with complete success, they alleged that confirmation in the fullest manner had thus been obtained for the principal statements which were made in their former report respecting the persons implicated, notwithstanding the solemn declarations of some of them to the contrary; and they thought it proper to add that Alexander M'Rae, who had eluded the hands of justice, had since been apprehended and sentenced to twelve months' imprisonment.

During the whole course of their inquiries the sub-Committee have had only one object in view, that of bringing to justice the parties actually concerned. . . . . Totally unconnected with those parties, and personally uninterested in the decision, they have been regardless of the threats that were held out to them with a view to stop their proceedings; and have amidst difficulties which appeared almost insurmountable brought the subject to a final and successful issue. . . . . The sub-Committee at the same time wish it to be understood that

it is not solely to persons interested in the public funds . . . that an essential service has been rendered by this investigation; since many other markets, besides that in the Stock Exchange, are materially affected by news of a political character, and are thus made the theatre where the fraudulent and avaricious may impose upon the credulity of the innocent and unwary. In this manner it was known that many mercantile houses experienced very considerable losses on the day of the above fraud, and the sub-Committee had procured evidence in order to substantiate such cases on the late trial; but, on account of the very extensive and intricate nature of that part of the evidence which more immediately related to the transactions of this House, they were reluctantly obliged to abandon it. . . . . It is, however, well known to many members of this House that the sub-Committee entered on the prosecution with great pain and reluctance; but it is at the same time equally well known that they had been publicly accused, by some of the parties mentioned in their former report, of having published infamous, malicious, and unfounded falsehoods, and that they were consequently bound in vindication of their own character, as well as with a view to public justice, to investigate and bring to light the whole of the circumstances connected with that mischievous and atrocious plot.

In the progress of this inquiry the sub-Committee lamented that a character which had hitherto shone with so much lustre in the naval annals of this country should appear to have been so implicated in this affair as to render it imperative on them to include his name in the indictment for the conspiracy, notwithstanding every attempt was made and every plea suggested by them to avoid so disagreeable and painful an alternative. . . . . Notwithstanding the clearness and weight of evidence adduced at the trial, the public press has subsequently teemed with various falsehoods and misrepresentations artfully contrived for the purpose of rescuing some of the convicted parties from the disgrace which they had thus brought upon themselves. . . . . The sub-Committee therefore take this opportunity of noticing some of the most important of them, in order to remove any erroneous opinions which may have been entertained as to their motives and conduct; and they declare—

1. That William Crane, the hackney-coachman, was the first person examined by them in their inquiry respecting the pretended Colonel Du Bourg, and that at his *first* examination (prior to its having been ascertained that Lord Cochrane resided

in Green Street) he stated that the pretended Colonel Du Bourg wore a *red* coat under his great coat, when he got out of the coach and entered the house.

2. That Thomas Shilling, the Dartford post-boy, afterwards confirmed the fact of the pretended Colonel Du Bourg having worn a *red* coat; without his having previously had any communication with Crane, and prior likewise to its having been ascertained that Lord Cochrane resided in the house to which the pretended Colonel was driven.

3. That William Crane never asserted before them, nor ever gave them any reason to believe that the person whom he took in his coach from the Marsh Gate to Green Street was Lord Cochrane himself.

4. That neither William Crane nor any other witness at the trial received any portion of the reward which was offered for the apprehension of the pretended Colonel Du Bourg.

5. That William Crane was not paid higher than the other witnesses in his station of life; which was at the rate of ten shillings per day. And that the whole sum paid to him did not exceed 17*l.*, which included sundry expenses that he had incurred, and the hire of his coach for part of the time when he was in attendance on the sub-Committee.

6. That Lord Cochrane was not the first person who pointed out to the sub-Committee that De Berenger was the pretended Colonel Du Bourg, since the gentleman to whom the whole of the reward of 250 guineas has since been given for that important service, as well as some other gentlemen, whose names it is unnecessary here to mention, had pointed him out to the sub-Committee *five* days prior to the publication of his lordship's affidavit of the 11th of March, and a warrant had actually been previously obtained against him.

7. That the assertion made by one[1] of the convicted parties in his petition to the House of Commons, that 'he offered a disclosure to the Stock Exchange Committee for which their agent offered him a pecuniary consideration; but on the Committee finding that the information he had to give went to exculpate Lord Cochrane and to implicate a different combination of men amongst themselves, they rejected your petitioner's information, and included him in the indictment in order (as he verily believes) to prevent him from giving his evidence at the trial; and, conscious of their iniquity towards your petitioner,

[1] M'Rae. See p. 195, *supra*.

they paid all his expenses for his appearing and pleading, and consented to waive his entering into the usual recognisances,' is a gross and infamous falsehood, no such motives or conduct ever having been contemplated or practised by the sub-Committee.

8. That the sub-Committee have never, directly or indirectly, during the progress of their inquiry, authorised or sanctioned the publication of any statement connected therewith, except the former and present reports of their proceedings; and that consequently it is unnecessary for them to answer any comments which may have been made on such pretended statements.

The Report went on to say

that these points the sub-Committee might, under any other circumstances, have considered it unnecessary again to bring forward; and they might justly have rested the propriety of their conduct on the decision of the jury. But, as some of the parties have, since their conviction, with an unprecedented degree of boldness and effrontery, wilfully made many false representations, in order to excite a popular clamour in their favour, and thereby to palliate or remove a portion of the disgrace which they had brought upon themselves, and as some of these misstatements have incautiously (and without a proper inquiry into the facts) been urged by several members of the House of Commons in their defence of one of the conspirators, the sub-Committee think that they should be wanting in duty to themselves if they suffered such misrepresentations to remain unrefuted and uncontradicted.

It concludes by expressions of gratitude to the public for the assistance generally rendered to them throughout the inquiry, and in particular by a Sunderland gentleman, through whose 'zeal, penetration, and exertions' De Berenger had been discovered and apprehended as he was on the very point of sailing for the Continent. The expenses of the trial, they said, had been entirely subscribed for by the members of the Stock Exchange. The Report is signed by the same ten gentlemen who had signed the Report of the previous year.

On the 2nd of February these ten, with the addition of three other members—John Hodges, Thomas Bish, and

Andrew Amédée Mieville—were appointed as a committee, for the purpose of distributing amongst Charitable Institutions the money arising from the profits made by Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt, which had been stopped till the result of the trial should be known.

They issued their report on the 20th of February, 1815, and I give some extracts from it which are not without interest.

It appears that the profits made on the day of the fraud were as follows, viz.:—

	£	*s.*	*d.*
By Lord Cochrane	2,470	0	0
Hon. A. Cochrane Johnstone .	4,981	5	0
Mr. R. G. Butt	3,048	15	0
	£10,450	0	0

and that such profits were made through the under-mentioned brokers, viz.:—

	£	*s.*	*d.*
Through Mr. Fearn	7,031	5	0
Mr. Hichens . . .	3,002	10	0
Mr. Smallbone . . .	216	5	0
Mr. Richardson . . .	200	0	0
	£10,450	0	0

But, although this was the amount of the profits made by those parties on the day and in consequence of the fraud above mentioned, and although this was the sum originally directed to be detained till the result of the trial should be known, yet the Committee were afterwards under the necessity of making some alteration in their directions on this point, on account of the following facts which were represented to them.

It was stated to them that Lord Cochrane and Mr. Butt had, subsequently to the 21st of February and prior to the detection of the fraud, entered into another very considerable speculation of Omnium, by which a great loss was sustained. Mr. Fearn, the broker to Lord Cochrane, represented to the Committee

that Lord Cochrane's loss on this subsequent speculation was 1,686*l.* 5*s.*, and that his lordship had refused to pay it, saying that Mr. Fearn must pay himself out of the sum of 2,470*l.* above mentioned, and which Lord Cochrane was then aware had been detained on order of the Committee. Mr. Richardson, one of the brokers to Mr. Butt, also stated that Mr. Butt's loss on this subsequent speculation, effected through his agency, was considerably more than the 200*l.* profit made by his former speculation, and that Mr. Butt consequently insisted on having that 200*l.* deducted from the amount of such loss.[1]

As it was evident therefore that, under such circumstances, these losses would fall entirely upon these brokers, and not on Lord Cochrane and Mr. Butt, the Committee directed that the sum to be detained from Fearn should be only 5,395*l.*, and that nothing should be detained from Richardson, who, moreover, was not a member of the Stock Exchange.

The net sum, therefore, ultimately detained was as under, viz.:—

	£	s.	d.
From Mr. Fearn	5,395	0	0
Mr. Hichens	3,002	10	0
Mr. Smallbone	216	5	0
	£8,613	15	0

By investment in Exchequer Bills the above amount had increased to 8,983*l.* 9*s.* 6*d.*, which had been distributed amongst various charitable institutions mentioned in an appended list without any deduction whatsoever, and no part of it had been appropriated to the Charitable Fund of the Stock Exchange or to any purposes connected with that house or any of its members.

[1] Mr. Butt, in a letter published at p. 42 of his pamphlet, writes to Mr. Richardson as follows on the 14th March, 1814: 'Sir, I have received your letter enclosing my account with you, stating a balance of four hundred and odd pounds due by me to you. Although I might most justly refuse to pay it, as the members of the Stock Exchange have stopped the balance due to me, still their conduct will not induce me to do a dishonourable act by following the plan adopted by them. I therefore wish you to call upon me to-morrow morning at No. 5 Shorter's Court, when I will give you a draft for the amount.' If Mr. Richardson's statement to the Stock Exchange sub-Committee is correct, Mr. Butt's virtuous resolution was only half carried out.

CHAPTER IX

THE ATTEMPTED IMPEACHMENT OF LORD ELLENBOROUGH

On the incidents of Lord Cochrane's imprisonment it would be unnecessary to dwell, had not his escape and recapture become the subject of legal proceedings which find their place in this narrative.

It is sufficient to say that for the first nine months of his residence in the King's Bench, he remained quietly in a confinement which, at that date, to a man of private means was never too rigorous, and he alleges that he occupied himself with his favourite scientific and mechanical pursuits. On the 6th of March, 1815, however, from what motive it is difficult to tell, for the period of his release was well within sight, he chose to escape from the ill-guarded prison; and on the 20th of March he made his appearance in the House of Commons to take his seat as the newly elected member for Westminster. Here he was promptly arrested by the officers of the law, and, after an unseemly personal struggle, was dragged from the precincts of the House.

Of the treatment accorded to him on his recapture Lord Cochrane afterwards complained in very vehement language. Even if the account given by him is absolutely correct, it must be admitted that his conduct had placed his gaolers in a position of great difficulty, but, as will be seen on a subsequent page, Lord Cochrane refused to avail himself of an opportunity to substantiate these statements by calling witnesses, though challenged to do so.

On the 3rd of July, 1815, he was released, having paid

his fine in a thousand-pound bank note, endorsed with a defiant inscription, and on the 6th of July from his place in the House of Commons he gave notice that he should, early in the next session, move for the appointment of a committee to inquire upon the evidence taken upon the proceedings in a late trial, and into the conduct of the Lord Chief Justice upon that trial. Pursuant to this notice he brought forward on the 5th of March, 1816, his Articles of Charge of 'Partiality, Misrepresentation, Injustice, and Oppression' against the Lord Chief Justice Ellenborough. They were thirteen in number, and each article was followed by a reasoned and argumentative statement of the grounds on which it was founded. The document fills sixty columns of Hansard, and was read at length, the proceeding taking up between two and three hours, after which it was ordered, on Lord Cochrane's motion, that they should be printed for the use of members. I give the charges themselves as they appeared in Hansard; the commentary I am compelled to omit, from its extreme length, and from the fact that it is little more than a repetition of facts and arguments discussed and dealt with elsewhere in these pages.

Vol. xxxii. p. 1146 *et seq.*

1. Of compelling the Counsel for the defendants to enter upon the defence at or near midnight, when they complained of great fatigue from long attendance, and *assigning insufficient and artificial reasons for so doing.*

2. Of confounding the different cases of Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt, and untruly representing their respective transactions in the funds on and prior to the 21st of February, 1814, to be so far similar in manner and amount as to indicate that each of them had speculated with a view to that particular day.

3. Of untruly alleging such a communication between Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt, as to render it impossible for the jury to say from whom the draft of 470*l.* and a fraction, or such part of its ultimate produce as was found in the possession of De Berenger, ultimately proceeded.

4. Of unwarrantably insinuating that a connection between Lord Cochrane and the bank notes found in De Berenger's

possession had been proved by evidence, and expressly instructing the jury to consider, as a circumstance against Lord Cochrane, the evidence given in order to prove such a connection, and unjustly evading the consideration whether the evidence so given was not negatived by evidence of a memorandum found in the handwriting of De Berenger.

5. Of unduly and repeatedly insinuating to the jury that Lord Cochrane in disclosing the name of De Berenger was influenced by an opinion that he had quitted the kingdom.

6. Of unwarrantably and untruly insinuating to the jury that the reason assigned by Lord Cochrane for obtaining leave of absence in Feb. 1814 was introduced by him as a colour to draw off their attention from other matters.

7. Of misrepresenting the disclosure voluntarily given by Lord Cochrane on the subject of his seeing and being in the company of Mr. Cochrane Johnstone and Mr. Butt on the morning of Feb. the 21st, and unwarrantably applying it as evidence that they met together to communicate on some business in common to be transacted on that day.

8. Of unwarrantably controverting the declaration upon oath of Lord Cochrane that the note received by him on Feb. the 21st was signed close to the bottom, and that he could not read the name; and of repeating with commendation the fallacious argument of the Counsel for the prosecution that the name could not be written at the bottom because the writer, after closing the note, opened it again and wrote something more.

9. Of repeatedly, unwarrantably, and unjustly representing to the jury that the reason assigned by Lord Cochrane upon oath for returning home, in consequence of the note he received on the 21st of Feb., was unworthy of credit, because he did not communicate it to the servant who brought the note.

10. Of devising unwarrantable and unfounded objections to Lord Cochrane's declaration upon oath that he received a letter from Major Cochrane, his brother, acquainting him with his dangerous state of health previous to the 21st of Feb., 1814, and of treating it as unworthy of credit, though supported by circumstances and by the affidavit of Major Cochrane himself, stating that he wrote such a letter early in that month.

11. Of unjustly representing that the evidence adduced on the part of Lord Cochrane that application had been made to obtain an appointment for De Berenger connected with the service in America was immaterial to corroborate the narrative contained in Lord Cochrane's affidavit; of untruly insinuating

that Lord Cochrane himself had suggested the application, and of applying it as evidence of guilt against Lord Cochrane.

12. Of injuriously passing over, without comment or observation, that part of Lord Cochrane's affidavit which stated that when he objected to take De Berenger to America, without leave from the Admiralty, he recalled to his recollection certificates which he had formerly shown him from Lord Yarmouth and others in official situations; and of misrepresenting the evidence of the Hon. Alexander Murray, on the subject of Lord Cochrane's acquaintance with De Berenger.

13. Of repeatedly, unwarrantably, and unjustly conveying and enforcing an opinion that De Berenger appeared before Lord Cochrane on the 21st of Feb., 1814, in the red coat, star, and order in which he had committed the fraud; of suppressing evidence corroborative of Lord Cochrane's declaration upon oath that he wore in his presence a green uniform; and of supplying evidence in opposition thereto, and passing without pause or remark the solemn declaration of Lord Cochrane upon oath, that he had no concern, either directly or indirectly, in the fraud that had been committed.

Hansard, vol. xxiii. p. 22.

Lord Cochrane made a short introductory speech, in which he said that he had but one course left now to pursue—namely, to show that the charge of the Lord Chief Justice on which he directed the jury to decide was not only unsupported by, but was in direct contradiction to, the evidence on which it professed to be founded. He did not wish to use any harsher description of that charge, or to excite discussion at that moment; either he, Lord Cochrane, was unfit to sit in the House, or his Judge on the Bench. He had brought his charge deliberately against the Lord Chief Justice, and he defied the whole world to disprove the facts therein detailed; they were founded on the summing up of the Judge, which he would prove to have been corrected by himself, and by the evidence contained in the minutes taken by the sworn shorthand writer of the House.

On the 7th of March Lord Cochrane moved for certain papers relating to this charge against Lord Ellenborough. Some of them were letters that had passed between him and the Secretary of the Admiralty, early in February

1814, with regard to obtaining leave, and in March of the same year relative to his coming up to town to meet the charges against him.[1] The others were concerned with the dates of the arrival of despatches and of military returns in connection with the illness of Major Cochrane. The motion was agreed to, but it was pointed out, in the short discussion on it, that the only way in which the noble lord could make use of these documents was to show some fact that would have been useful to him on his trial, but the opportunity of proving which had been refused.

On the 29th of March Lord Cochrane moved for leave to present an additional charge against Lord Ellenborough. It alleged partiality, &c., in refusing to hear him, upon his first application to the Court of King's Bench for a new trial, and in rejecting his second application upon the ground that all the persons implicated in the same indictment did not appear to concur in the application. Had the charge stopped here it might have gone in with the other thirteen, from which it differed little in point of accuracy, though it differed from them in being an attack on the whole Court of King's Bench, and not merely on the Lord Chief Justice. But it went on to charge Lord Ellenborough with countenancing, sanctioning, and authorising the misrepresentations of Justice Le Blanc in pronouncing sentence upon the occasion referred to. This attack upon an absent man,[2] who was not accused in such a manner as to render it possible for him to enter upon his defence, was more than the House of Commons would stand, and the embryo 14th charge was accordingly withdrawn.

Hansard, vol. xxiii. p. 706.

p. 707.

On the 30th of April Lord Cochrane moved, and Sir

[1] The Admiralty letters moved for were (1) a copy of Lord Cochrane's letter to the Secretary of the Admiralty, Feb. 5th, 1814; (2) a letter from the Secretary of the Admiralty to Lord Cochrane, Feb. 7th, 1814; (3) a letter from Lord Cochrane to the Secretary of the Admiralty, dated March 8th, 1814; (4) a letter from the Secretary of the Admiralty to Lord Cochrane of the same date. Neither of these latter are now to be found in the Admiralty Records, and Lord Cochrane's application is the only evidence I can find as to their existence.

[2] Sir Simon Le Blanc died on the 15th of April, 1816.

Hansard, vol. xxxiv. p. 108. Francis Burdett seconded, 'that the thirteen first charges against Lord Chief Justice Ellenborough for partiality, misrepresentation, injustice, and oppression be referred to the consideration of a committee of the whole House.' Lord Cochrane's observations were few in number; he defended himself from the charge of delay that had been brought against him, and said he should not at present enter into any detail, as the charges explained themselves. He proposed to examine in support of the first charge all the Counsel, and also the jury and the shorthand writers, to prove the artificial reasons assigned by the Lord Chief Justice for compelling his Counsel to proceed to his defence after the hour of midnight, when in a state of incapacity, owing to the length of their attendance.

p. 106. The Hon. Edward Law, member for St. Michael's, eldest son of the incriminated Lord Chief Justice, and future Governor-General of India, was the first member to speak on the motion. Lord Cochrane had invited him to p. 105. support the investigation as a means of dispelling falsehood and establishing truth, but he rose for a very different purpose. The charges on the Table were, he said, far too contemptible to require a laboured refutation. He could not believe that the noble lord's object was to destroy the character of the Lord Chief Justice; if such were his object let him proceed to praise him. Mr. Law's language was strong, but perhaps hardly stronger than the occasion and his relationship to the accused warranted. It is highly improbable that he had abstained from consulting his father, and apart from the vigorous language his speech is valuable as affording the only public vindication of his conduct in this trial which the Lord Chief Justice ever condescended to.[1]

[1] There exist in the possession of Lord Ellenborough's family the manuscript notes of this speech. They contain many passages which do not appear to have been delivered in the House. Possibly the tone of Lord Cochrane's remarks may have rendered Edward Law too indignant to descend to anything which might be construed into an apology. There are one or two of these points so omitted which are interesting enough to justify their publication.

'Where is the proof, where the probability, of wilful and corrupt partiality in the Judge?'

The duties of a Judge, in summing up the evidence, said Mr. Law, appeared to be to draw the different radii of evidence to one point, in such a way as to lead the jury to the investigation of truth and the detection of guilt. It was not his duty to protect the criminal, and to say all that an advocate might be presumed to say in his defence. After the evidence on both sides had been gone through and the speeches of Counsel heard, it became the Judge's duty, on the sudden, so to bring the points in evidence to bear upon the case that the jury might be better enabled to form their opinion. The task was an arduous one, and if, in performing this extemporaneous duty, he should sometimes fall into error, it was not very surprising. Even if some error had been detected it would not be the duty of the House, nor consistent with their prudence, to visit it with severity. He knew but of one perfect Judge. It was for the noble lord in his wild and extravagant philosophy to demand from man the first and noblest attribute of divinity. Let the House consider the extraordinary faculties of mind that were required in Judges, the important duties which they had to fulfil, and then let them reflect whether in the performance of these duties they should have constantly presented before their eyes the fear of a Parliamentary inquiry.

With increasing bitterness he asked in whose case it was proposed to subvert the equal administration of the laws. It was not in cases of charges brought by a third party, but by a convict against the Judge who tried him.

'The Judge an admirer of gallant actions, and with jury and public partial to Cochrane, and as gentlemen unwilling to believe the fraud to have been possible.'

'Can House believe judges and jury would have united in conspiracy to ruin him?'

'All this preparation has discovered nothing that upon a reference to the trial is not answered immediately. New evidence has been mixed up in pamphlet, and assertions considered as proof.'

'Lord Ellenborough had no knowledge of Lord Cochrane. Zeal for naval service would have made him partial and anxious to acquit.'

'*The Judge decides on punishment without considering individuals, but only the crime. Throne, the proper fountain of mercy.* As a mark of gratitude for past services.'

The noble lord had called upon the House to entertain the charges on his own responsibility, forsooth; but was it necessary to state that if the verdict of the jury which found him guilty was to be depended upon he was in fact a perjured man? It was impossible not to feel convinced that the House would reject the charges with indignation.

Hansard, vol. xxxiv. p. 108.

Mr. Law was followed by the Right Hon. George Ponsonby, the leader of the Opposition in the House of Commons, who, it will be remembered, had voted against the expulsion in the debate of July the 5th, 1814. He had himself practised at the Irish Bar with considerable success, and had for a short time held the office of Lord Chancellor of Ireland. The motion, he said, was, in fact, one of impeachment, attaching high misconduct to the Judge in the trial of the noble lord. It was no light matter to arraign a man placed at the head of the justice of the country. One of the charges was for a denial of justice. The speaker acknowledged that he could not see the propriety of that rule of the Court which refused a new trial unless all the defendants were present, but this was the rule acted upon by the whole Court, and the proper way of remedying the grievance was to alter the law on the subject: nothing could be more unfounded than to make it a ground of charge. Did the Articles on the face of them contain matter of criminal charges that would justify the House in entertaining them?

Dealing with the first charge, that of the adjournment, he said that, even on the statement of the defendant, the Judge did nothing but what was perfectly lawful. It was always to be regretted when any adjournment of a trial took place. But he could see no disadvantage to the noble lord from the precise period of the trial at which the proceedings were adjourned. The very circumstance of the statement of his case being the last thing left on the recollection of the jury appeared rather advantageous to the noble lord. He had the benefit of the impression which his Counsel endeavoured to raise being left as the last thing on the minds of the jury, and next day the evidence in his favour was most likely to operate an

additional prepossession in his favour, if it availed anything at all in the estimation of the jury. He could see no improper purpose, no undue object in the mind of the Judge, and if there were none, to what purpose should the House go into a Committee? He had examined all the charges, and he could see no ground for impeachment of the Chief Justice, or for taking any step which might imply the slightest doubt of the rectitude of his conduct. He felt it due to the character of the judges to afford them support wherever they maintained the course of uprightness, and nothing could be more cruel than to bring forward unfounded statements. It was not enough to prove a mistake in point of fact, but some gross error which could only be attributed to improper motives, and which gave reason to suppose that the badness of the heart had contributed to the perversion of the judgment.

The Solicitor-General, Sir Samuel Shepherd, who followed, agreed with Mr. Ponsonby that the learned Judge's conduct with regard to the adjournment, so far from operating against the prisoner, had turned materially to his advantage by giving time for the impression that had been made on the jury to take its due course. In a trial of this sort, which depended not on any investigation of nice legal arguments, but on a plain statement of facts, he would prefer to state what he had to offer when the whole evidence was warm from the hearing, and not wait to be called on the next morning, when the impression then so warmly felt should have become cold and weakened. This at least he would prefer for himself, at whatever expense of mental or bodily fatigue. Moreover, it was for the advantage of justice and truth, in a case where the defendant comes prepared, to hear his statement before any division of the business: the end of the prosecution was not the proper time to divide a cause; the right course was to say to the defendant, 'Let me hear your opening. I shall then know the outline of your defence and fix you to your first statement.'

Hansard, vol. xxxiv. p. 111.

All the charges imputed misconduct at the trial, and in order to prove this, facts which took place subsequently

to the trial, which were never brought before the jury, supported by mere voluntary affidavit, were stated to have produced partiality and corruption in the Judge at the trial. The whole amount of the charge was that the noble Judge made use of erroneous reasoning and did not give the proper inferences to the jury. And who was the fairest judge of the construction to be put on facts, a person who was not implicated, whose mind came to the examination unbiassed, whose fame and character were at stake on the construction he should form, or the accused himself? This was no matter done in a corner. For what object was it that the noble Judge who presided was supposed to have violated his duties, to have sacrificed a character earned by a long and laborious course on the Bench and at the Bar, to have subjected himself to the disgrace of an impeachment in that House? What was it to him beyond the event of the trial what became of De Berenger, of Butt, of Cochrane Johnstone—what even of the noble lord himself? And he would call the attention of the House to the character of the noble Judge. Never was there an individual at the Bar or on the Bench less liable to the imputation of corrupt motives. Never was there one more remarkable for sturdy independence of character than the noble and learned lord. For twelve years he had presided on the Bench with unsullied honour, displaying a perfect knowledge of the law, evincing as much legal learning as was ever amassed by any individual. And now in the latter part of his life, when he had arrived at the highest dignity to which a man could arrive, they were told that, in the face of the public, when all around him had an opportunity of detecting him, he had sacrificed all his honours by acting from corrupt motives for which no reason whatever was assigned. Let the House read the trial; let them look at the evidence; let them consider the summing-up and the comments of the learned Judge, and they would assuredly come to the conclusion that, instead of having pressed the case too hardly, he had omitted much that might have been urged against the noble lord. No fairer, no more impartial charge had ever been delivered. The noble

Hansard, vol. xxxiv. p. 113.

lord had urged that some points had not been proved which were material to him, but was it the fault of the learned Judge? Was the Judge to suppose that defendant's Counsel had been deficient in their duty? It was never suggested to him, and even if it had been he could not command a different course to be taken. The Judge had a right to suppose that the gentlemen employed had proved everything that could be proved for their client; and conceiving the evidence to be fully given, he had left the case fairly to the jury, who came to the decision of which the noble lord complained. The learned Judge was accused of partiality, injustice, and misrepresentation, because he did not reason in the same way in which the noble lord would have done.

Sir Francis Burdett's was the only voice raised in favour of the motion. Dealing with the adjournment, he stated, in open contradiction to the facts, that the Counsel distinctly declared to the Judge their inability, from fatigue, to enter into the defence at that late hour of the night, and that they applied for a postponement of the trial until the next day, in consequence of their excessive fatigue after a trial of fourteen hours' duration. And then reverting to the thirteenth charge, he said that it contained a very serious accusation; it charged the Chief Justice with unwarrantably inferring an opinion that De Berenger appeared before Lord Cochrane in a red coat, of which there was no evidence. If what the learned Judge had stated had been proved in evidence (but he denied that it was), and had he (Sir Francis) been on the jury, he should have been compelled to return that verdict which the jury had given. But there was not an iota of evidence to prove that De Berenger ever appeared before Lord Cochrane in what the Judge had termed 'his masquerade dress.' If such evidence were given, his case would have been utterly defenceless. Sir Francis made another rather important admission in the course of his speech; he complained that the Solicitor-General, in arguing that the charges ought not to be entertained, had selected the weakest of them for animadversion; but it will be noticed that the one on which

Hansard, vol. xxxiv. p. 116.

Sir Samuel Shepherd had chiefly commented was that very question of the adjournment on which public opinion in recent days has grounded its principal outcry against Lord Ellenborough.

Hansard, vol. xxxiv. p. 121.

And it was on this very point that the Attorney-General, Sir Wm. Garrow, who followed, immediately pounced. After repeating and endorsing what had fallen from Mr. Ponsonby and the Solicitor-General, he said that they knew little of the hardships to which his profession were subjected, who thought that the fact of being called on to proceed at so late an hour would be considered to press very hardly on those whose situation was thus made the object of commiseration. He himself had been engaged in his professional labours from nine o'clock that morning without having taken the slightest rest or refection, and he should be extremely ashamed if he could not continue his exertions till a later hour of the night than that at which they had yet arrived. In a case like that of the noble lord the Counsel, from finding it hopeless, might be content to adjourn, on the plea of their being fatigued, but the result on this occasion had proved they were not disqualified from the due performance of their duties, for on looking at the defence it must be admitted that mortal man could not have made more of such materials than had been made of them by the Counsel of the noble lord.

It was not the least of Lord Cochrane's misfortunes, he said, that he had had the hon. Baronet for his advocate in that House, for he had enlarged on a part of the case, the red coat incident, in which he could be followed with the absolute certainty of convincing every man that Lord Cochrane's contention was erroneous. Into this part of the case the Attorney-General went at great length, commenting on the abuse which had been heaped upon the character of Crane, the hackney-coachman; he said that, if he had given untrue evidence, the noble lord might have found means of proving it to be false, but two years had passed away, and who had dared to indict him for what he had sworn on the trial? If De Berenger did

not go to the house in the red coat, where were his lordship's servants, and why were they not called to prove this? It might be said that this was the fault of the Counsel, but in a case like this such a point would have been insisted upon; and he was sure the Counsel could not but see the importance of putting a negative on the red coat. One of the servants had been called, and Counsel had not ventured to ask him a question respecting the coat which De Berenger had worn. It became the duty of the noble and learned Judge to offer those comments which he had submitted to the jury; he would have been guilty of a dereliction of his duty had he not done so. The Attorney-General pointed out again that Lord Cochrane, though his motion for a new trial had been refused, had suffered nothing by such a refusal; his case was heard over again by the judges; the notes of the Lord Chief Justice were read; an opportunity was allowed of comparing them with the shorthand notes taken by others, and after the most mature deliberation, after rehearing all the depositions of the witnesses and any new affidavits that could be brought forward, a full Court of judges confirmed the verdict of the jury, and decided that there was no ground for a new trial. He had acted under the noble and learned Judge for many years, and in the case of the meanest individual he should not fear to point out to his lordship any instance in which he conceived him to have travelled out of the law. If he had seen what he thought an error in his conduct on the trial, established by anything that had been said that night, he would not have failed to point it out to the noble and learned lord.

Lord Cochrane, in his reply, reiterated that Lord Ellenborough had distorted and misrepresented facts, and had withheld circumstances from the jury which were in evidence and were essential to their pronouncing a just verdict. Hansard, vol. xxxiv. p. 127.

The House divided, and there were found 89 votes against the motion. Lord Cochrane and Sir Francis Burdett were the tellers of the motion, but no member entered their lobby, and the motion was accordingly lost by 89 votes to 0. p. 180.

More than eighty years have elapsed since this vote was taken, and I think I may safely assert that not one atom of additional evidence in support of these charges has been placed before the public. Assertions have been made by an inculpated party; of evidence there is none.[1]

Of recent years there is, so far as I am aware, only one parallel to this motion, and to its reception in the House of Commons. On the 23rd of April, 1875, Dr. Kenealy moved for the appointment of a Royal Commission to inquire into the case of the Queen *v.* Castro, better known as the Tichborne case. Early in his speech the mover began by saying that the trial of Lord Cochrane before Lord Ellenborough had analogies which the House ought to apply to the present circumstances. Cochrane had received very little justice from Lord Ellenborough, and he was prepared to show what justice 'Tichborne' received from *his* judges. Accordingly he launched out into the most unmeasured attack on Sir Alexander Cockburn, the Lord Chief Justice of the Queen's Bench, and made it clear that the grounds on which he asked for such a commission were 'injustice, malice, and oppression' on the part of the Court. A long debate followed, and a speech by Sir Henry James deserves notice as a masterly and eloquent exposition of the dangers that attend Parliamentary attacks on the Judicial Bench, and on the independence of juries. The motion was pressed to a division and lost. Dr. Kenealy and Mr. Whalley were the tellers for the minority, and, more fortunate than Lord Cochrane and Sir Francis Burdett, they

Hansard, vol. ccxxiii. p. 1520.

p. 1582.

[1] In a letter to the *Times* of the 21st January, 1896, there is a suggestion made that Lord Cochrane suffered from colour-blindness, and so may have confused the red and the green coat. I would only remark that he lived until 1860, and spent a large portion of his leisure in scientific studies and experiments; I should have thought he would have been one of the last men in the world not to have discovered that he was colour-blind had he really been so; but in all the literature devoted to him both during his lifetime and after his death I cannot discover a hint on this subject. It should be remembered that during the most important portion of his active career he was generally in company with other ships of war, and was in consequence perpetually signalling or looking out for signals. Could such a physical defect have escaped him? The writer of the letter can have known little of the facts of the trial, or he would have seen how much was left unaccounted for even on this hypothesis.

found one member, the late Major O'Gorman, on their side.

Mr. Ponsonby, in moving that all the entries in the votes of the House of the proceedings relative to the articles of charge be expunged, took the opportunity of saying that the question just decided had been, not as to the guilt or innocence of Lord Cochrane, but as to the guilt or innocence of Lord Ellenborough. The Chief Justice had been drawn into the character of a defendant, and the point was whether or not a case had been made out against him.

Lord Castlereagh seconded the motion. The charges, he said, contained no criminal matter whatever, but imputations devoid of all colour, and amounting merely to vague charges of partiality and misrepresentation. The almost unprecedented vote that had just taken place would show the sense the House entertained of the character and conduct of Lord Ellenborough.

The motion was put and carried *nem. con.* Let me add the comment of Mr. Townsend, whose account of the trial I have already had occasion to refer to.

The stern integrity and iron virtue of the Chief Justice demanded this public vindication. He scorned the sordid fraud, and was deeply impressed with the importance of making it known to the whole country in what light the law contemplated the magnitude of the crime, what was its true character, and what was the nature of the punishment attached to it. In defiance of all the speeches in the House of Commons, and addresses to the electors of Westminster, and charges of impeachment, Lord Ellenborough knew his own dignity too well to condescend to utter one syllable of explanation or apology.

'Modern State Trials,' vol. ii. p. 9.

CHAPTER X

DAVIDSON'S TRIAL

Some time in the early part of 1816 De Berenger published *his* version of the fraud in a work entitled 'The Noble Stock Jobber.'[1] It is a book which it is impossible to trust or follow, and yet which cannot be left altogether unnoticed. On his own confession De Berenger is shown in it to have been the primary agent of the fraud, and a party to the most bare-faced perjury at the trial; and neither the style in which the book is written nor the vindictive tone adopted in it is calculated to prepossess the reader, or to make him accept De Berenger as an authority. The style is, indeed, about as bad as can be imagined, and there is an amount of padding which renders the narrative inexpressibly tedious. It must be remembered, also, that it was written after Lord Cochrane, both in the House of Commons on the 5th of July, 1814, and in the 'Letter to Lord Ellenborough,' had given his case to the world; and much of it is professedly an answer to the latter publication. In giving a brief account of its contents I must be understood as not accepting or relying on them.

I cannot do better in the first place than give the substance of the earlier part of the narrative as it is sum-

[1] The full contents of the Title-page are curious: 'The Noble Stock Jobber; or, Facts unveiled irrefutably to disprove Lord Cochrane's affidavits. Given as a simple narrative minutely detailing every stage of the Author's intercourse with the Cochrane Family; exposing the seductive Arts which since have made him their victim, and incontrovertibly proving that Lord Cochrane was previously acquainted with and deeply interested in the events that on the 21st of February, 1814, affected the Stock Exchange. Including also a variety of adventures and subsequent events, unfolded to counteract false declarations of innocence, hitherto artfully, sedulously, and designedly employed to ferment discontent, and offered in atonement to error.'

marised in a pamphlet[1] published in Lord Cochrane's interest in the early part of the same year.

Some short time prior to the 13th of February, 1814, Mr. Cochrane Johnstone solicited De Berenger to draw up a plan, showing how an officer could be represented as bringing despatches, and he (De Berenger), not considering it criminal, promised to do so. On the 13th Mr. Johnstone introduced him to Mr. Butt. On the 14th Mr. Johnstone and Mr. Butt told him they had bought some Omnium for him. On the 15th or 16th, at the pressing invitation of Mr. Butt, he went to his office at the Stock Exchange, and saw Lord Cochrane there; but no conversation relative to any plan for the elevation of the funds took place on that occasion. On the 16th Mr. Johnstone privately reminded him of his promise, and seemed displeased that he had not prepared something like a plan fit for execution. De Berenger then promised to furnish one speedily, and did immediately draw up a plan accordingly, but without intending to assist in its execution, and without any serious expectation that it would be executed at all; for he considered Mr. Johnstone in the light of a man who, from the love of mischief, experienced a gratification in the contemplation of such a scheme; and that, so satisfied, he would forego its execution, contenting himself with the enjoyment of knowing its practicability. In one or two instances, between the 16th and the 19th of February, De Berenger, when he saw Mr. Johnstone, had the plan in his pocket, ready to show him in case he should ask for it, but Mr. Johnstone did not renew the subject, and therefore De Berenger gladly avoided producing it, as it was principally intended to prevent reproof. On Saturday, the 19th of February, De Berenger, in compliance with another pressing invitation, went to Mr. Butt's office, little dreaming that he should go out of town that evening.[2] He there found Mr. Cochrane Johnstone, Mr. Butt, and Lord Cochrane, and, after half an hour's conversation on general subjects, the discourse was directed to the state of the

[1] '*De Berenger Detected.* The letter of C. R. De Berenger to his solicitor, dated Feb. 17, 1814. Printed in refutation of his fabricated history of the Stock Exchange Fraud, recently published. May 1816. Printed by *W. Jackson*, No. 8 Peterborough Court, Fleet Street.'

[2] 'At that time I did not know that the WEDNESDAY FOLLOWING (that is the 23rd February) WAS THE SETTLING DAY, and which, without a great rise, must have entailed an immense loss, perhaps irrecoverable ruin, on these three speculators in the public funds.' 'Noble Stock Jobber,' p. 64.

funds. At length—namely, about two o'clock—Mr. Butt informed him that if he could not help him they should all be ruined. He then, for the first time, produced his plan, and gave it to Mr. Johnstone, with a private intimation that he was to keep it secret from the others, and he was greatly surprised and offended at his handing it over to Lord Cochrane, as he had not till then the slightest suspicion that either Lord Cochrane or Mr. Butt was aware that he had promised to furnish Mr. Johnstone with a plan of that description. Mr. Johnstone then told him they were all as one in that business, and, at last, after some hesitation, and merely to prevent the ruin of his friends, he did, at their joint and urgent request, consent to put his plan into immediate execution, entirely free from mercenary motives, and stipulating for no other condition than that his name should ever remain a profound secret, to which all pledged their word of honour.[1]

'Noble Stock Jobber,' p. 67.

Having brought matters to this point, De Berenger goes on to narrate how the three conspirators provided him with the necessary funds (60*l.*), out of which he procured the staff officer's uniform and other necessaries; and that thus prepared he went down to Dover that Saturday night. He gives a prolonged account of his journey down, his stay at Dover, his appearance at the Ship Inn, and his journey back to London. The details differ in several points from the evidence given at the trial, against much of which he inveighs, and in particular he asserts that the letter to Admiral Foley was taken down already written in another person's handwriting. He says that he drove to Lord

p. 191.

Cochrane's house against his own judgment, but at the particular request of the latter, who had insisted on it at the interview on the 19th. As to what took place at the house in Green Street, he gives a flat contradiction to Lord Cochrane's affidavit in almost every particular, and he adds, moreover, that on the evening of the 21st, in pursuance of an old engagement, he dined with the Basil

[1] The aim of the pamphlet from which I have taken this abstract is to show that De Berenger's account of the transaction is utterly false. For this purpose, *inter alia*, a letter said to be his, and professing to be dated 17th of February, 1814, is reprinted and contrasted with his book. This was the letter referred to by Lord Cochrane in the House of Commons, July 5th, 1814.

Cf. supra, p. 198.

Cochranes in Portman Square, that Mr. Cochrane Johnstone was of the party, and that Lord Cochrane came in afterwards. He says that the hoax was the principal subject of conversation, as indeed, I may remark, it probably was at every other evening party in London.

He further says that he dined the following evening at Cochrane Johnstone's house, where he met Butt and Lord Cochrane; that he had further interviews with them all throughout the week; that they were urgent with him to leave London; that on the evening of the 24th Cochrane Johnstone gave him 400*l.* in one-pound bank notes at a private interview in the latter's house, and that finally on the 27th (Sunday), Cochrane Johnstone induced him to fly, by telling him that his participation in the fraud was known, that the Bow Street officers were on his track, and that the only means of saving himself, and them, from disgrace and utter ruin was to make his way to Amsterdam, where Cochrane Johnstone would join him, and where an ample future provision would be made for him.

'Noble Stock Jobber,' p. 275.

Here the narrative stops. De Berenger promises to the reader a continuation carrying the story up to date, and in the appendix gives a synopsis of this second part, but his promise appears never to have been carried out; at least I have been unable to find any later publication. I do not think, however, that the cause of truth is the poorer thereby. I have only given the barest details, leaving out a vast number of 'calumnious aspersions' freely scattered throughout the book, but there is one point which I must treat in some little detail before taking a final farewell of De Berenger.

That point relates to the costume worn by De Berenger on the Monday in Green Street, and to the wardrobe taken down by him to Dover. His account is written with the direct object of contradicting Lord Cochrane's affidavit and subsequent statements, and due allowance will be made for that fact, but this is what he says. On going down to Dover he was attired in an old blue coat, a black silk waistcoat, drab kerseymere breeches, jockey boots, a grey military great coat, and a round hat; he had also a yellow

pp. 94, 95.

silk handkerchief tied loosely over a white cravat, for the purpose of concealing the lower part of his face; and he carried in his hand a brass-mounted cavalry sabre in a list case. The rest of his equipment was contained in a fair-sized portmanteau of yellow leather purchased for the occasion. It consisted of a scarlet uniform with blue cuffs and collar; a star and silver medallion, the latter suspended by a black ribbon, a dark brown fur foraging cap, with a gold band and white cockade; a sword belt of black leather; a pair of dark bottle-green overalls; two black silk handkerchiefs and a brown wig; and a black leather bill-case with a lock to imitate a case for despatches. He states that he left the portmanteau in the Royal Oak Inn at Dover, where he arrived on the Sunday morning and spent the greater part of the day. In it were the old blue coat and the wig, which was found not to fit the forage cap; the round hat he threw away near Dover, before he entered it as the supposed messenger: with this exception the whole contents of the portmanteau were on or about his person in addition to what he had worn on the journey from London; he says he sewed the star on to the scarlet uniform, that he carried in his hand the black leather bill-case, and that this latter is what Crane in his evidence described as 'a bit of a portmanteau, a small black leather one, big enough to wrap a coat up in.'

And here I take leave of De Berenger. His sentence had expired on the 21st of June, 1815, but his creditors interposed to prevent his release. Whether he ever obtained his freedom, and when and where he died, I have been unable to discover. That he was a man of great talent and ingenuity seems undoubted, and his execution of the plot for which he was so justly convicted is marked by extreme coolness and skill; it was one of those bold, calm, well-considered schemes which succeed by their very simplicity.[1] But for the fatal mistake of driving to Lord Cochrane's house, and the still grosser one of remaining in England when the road to the Continent seems to have been open, it

[1] Ce plan était large, simple et facile, comme toutes les choses qui naissent d'une résolution hardie. (Dumas, *Vingt Ans après.*)

is hard to say that he would ever have been brought to justice.

I have already referred to the prosecution of Davidson for perjury. It took place in the Court of King's Bench before Mr. Justice Abbott (afterwards Lord Tenterden, and Lord Ellenborough's successor as Chief Justice) and a special jury on the 20th of July, 1816. Mr. Spankie and Mr. Marryat were for the prosecution, and Gurney defended.

supra, p. 95.

Upon the panel for the special jury being called, only five persons appeared. The counsel for the prosecution having been asked if they would pray a *tales* (namely, that the defect of special jurors might be supplied by common jurors), Mr. Marryat and Mr. Spankie consulted with Mr. Basil Cochrane, who was in Court, whether they, on the part of the prosecution, should take the course alluded to.

'Morning Chronicle,' July 22, 1816, and 'Times' of same date.

After a short interval they declined praying a *tales*.[1] The effect of this determination on their part would have been to prevent the trial from proceeding, had not Mr. Gurney on the part of the defendant immediately prayed that which the prosecutors had declined. Though it has since been freely admitted by Lord Cochrane that he was the prosecutor, he did not appear as such on the record. The indictment was for wilful and corrupt perjury committed on the trial of the prosecution of the 'King *v.* De Berenger and Others.' The perjury was assigned upon that part of Davidson's evidence in which he swore that at 11 o'clock A.M. on Sunday, the 20th of February, 1814, he saw De Berenger leave his lodgings. In opening the case Marryat said that there was no intention to cast reflections upon those who had produced the defendant as a witness at the trial, but almost in the same breath he alleged that they could not have been ignorant that, at the time fixed

See p. 274, *infra*, and 'Review of the Case of Lord Cochrane, p. 27.

[1] This reluctance to proceed without the full complement of specia jurors is very remarkable after the abuse heaped on Special Juries and Special Jurors in Lord Cochrane's speech in the House of Commons, nor does it show any great anxiety on the part of the prosecution to proceed with the trial of the case; yet in *De Berenger Detected* (p. 12) it is asserted that Davidson's legal advisers had contrived to delay the trial.

by Davidson, De Berenger was not in London. If the defendant could make out that he had made an unintentional mistake, the prosecutors had no wish to press for a verdict of guilty.

That Davidson had been guilty of a mistake the prosecution had no difficulty in proving, nor did the defence contest it. The evidence of David Bangham, the waiter at the Royal Oak, and of Henry Mecrow the landlord, which was not disputed, was to the effect that De Berenger arrived at the inn early on the morning of Sunday, Feb. 20th. He was then, Bangham said, dressed in a dark bottle-green coat, with a pepper and salt great coat on his arm. He wore boots, had a travelling cap on his head, and carried a sword in a green bag, and a leather portmanteau. He was in and out of the house during the day, and finally quitted it about 11 P.M., but he did not take away his portmanteau with him, and it remained there for several months. No evidence was given as to whether it was opened, or what it contained.

'Noble Stock Jobber,' pp. 108, 116, and *supra*, p. 259.

It will be seen, on referring to De Berenger's book, that this tallies with the account there given, except that the coat, which he says was blue, is described by the waiter David Bangham as dark bottle-green. Of the use of this fact made by Lord Cochrane at a later period I shall have something to say, but it may not unfairly be pointed out that the colour of the coat was not cross-examined to, nor was it in any way material to the issue of Davidson's trial. I would also observe that De Berenger was corroborated by the landlord as to a circumstance related in his book, connected with the former's insisting on prepaying his bill.

p. 112.

It would not be necessary to say more with regard to this trial had not Lord Cochrane, in the pamphlet published under his authority in 1830, spoken very bitterly of the decision of the jury and the conduct of the Judge, and in his memorial, published in 1847, described Abbott's conduct as atrocious. Therefore I think it necessary to give some extracts both from the speech of Gurney and from the summing-up of Mr. Justice Abbott:

Who was the prosecutor? said Gurney. He was not avowed; he was concealed; and the present was perhaps the first case that had occurred in which the prosecutor skulked behind a screen, afraid openly to appear as an accuser. Was the prosecutor Mr. De Berenger or some of his co-defendants, accomplices to his crime and companions in his punishment? . . . . Let him be who he might, the refusal of his Counsel to pray a *tales* showed no little anxiety even in this last stage to avoid a public trial. With the charge against De Berenger and his associates the jury were probably well acquainted; the project was to commit a gross fraud upon the Stock Exchange, by raising the prices of the public funds by false intelligence conveyed by De Berenger, under the assumed name and character of Colonel Du Bourg. On the trial the great question was, whether De Berenger was or was not at Dover on the night of Sunday, February 20th; and for the defendant no less than six witnesses swore that, so far from his being there, he was actually in London and its vicinity. The learned Counsel for the present prosecution had asserted that the Counsel for the Crown on the trial of the 8th of June were acquainted with the fact that De Berenger had left town on Saturday night. He (Mr. Gurney) wished that they had known it, and could have proved it, for it would have disposed of the only embarrassing circumstance with which the then prosecutors had to contend in their case; they had to establish that De Berenger was at Dover on Sunday night, and the evidence given on their part by Davidson that he was in London as late as eleven o'clock on Sunday morning they would willingly have avoided—and why? because it countenanced the *alibi* which the witnesses for the defendant were called to prove. Witness after witness was adduced to swear positively that De Berenger was in London on Sunday night; and what was the attempt now, and by the same people who had suborned the former witnesses? It was this: 'It is true (say they) we called evidence on the 8th of June to prove an *alibi*, but they swore to what was false; it is true we suborned them to commit perjury, but they did commit it, and we will now show you that De Berenger was actually at Dover at the very moment his own friends deposed that he was in London.' Who could determine on which side truth preponderated in two such stories fabricated by the same parties? Now, however, they came into Court to dispose of that, in support of which, on the former trial, they called two witnesses, the servants of De Berenger. . . . . Was no evidence given on

the 8th of June which was material that thus the prosecutor, whoever he was, had selected this mistaken individual? Did Lord Cochrane complain that any witness who had proved his connection with this scandalous business had sworn what was untrue; or did De Berenger deny that he was the main instrument in the transaction? *Did either of them come forward publicly and openly in a Court of Justice to deny any important fact connected with their conviction?* No: and the admitted guilt of De Berenger was the very foundation of the present prosecution. What, then, was the real purpose of this proceeding? *Was it by imputing falsehood to a witness on a fact unconnected with the real merits of the case to draw into question the justice of the former conviction when, upon every point material to the guilt of the parties, not a witness had been indicted?* If De Berenger were not the prosecutor, had Lord Cochrane now become the champion of his former friend? Did his lordship now connect himself with the man with whom on the 8th of June he contended he was totally unconcerned? If Lord Cochrane had been in reality no party to the foul conspiracy, *why had he not indicted for perjury the witnesses who had sworn that he was?* The defence on the former trial furnished matter for more than two or three prosecutions, not only for perjury, but for, if possible, the more profligate crime of subornation. . . . . This at least was clear, that the defendant had not wilfully forsworn himself, and that the fact on which he had been mistaken was immaterial to the question.

After some preliminary observations, Mr. Justice Abbott said:—

It is not necessary to go through the evidence now produced—three witnesses have sworn to the fact, and none have been called in contradiction; and you have probably made up your minds that when the defendant said that De Berenger was in London on Sunday morning at 11 o'clock, he spoke untruly. But arriving at that conclusion, you will only have proceeded one step towards conviction, because, as I have already stated, no man can be found guilty of wilful and corrupt perjury on the mere proof that the matter to which he deposed was untrue; you must be satisfied that the untruth was uttered as a deliberate falsehood—as the act of a wilfully corrupt man who had the criminal intention charged against him. . . . . Three things are asserted; 1st, that the witness remembered to have seen De Berenger go out at 11 o'clock on Sunday; 2nd, that De

Berenger did not dine at home; 3rd, that the witness thinks De Berenger did not sleep at home; and you will observe that the cross-examination was not at all directed to the time when he actually went out. The two last and most material facts stated by the defendant appear to be true, and had he been disposed to strain his testimony, he would rather have done it the other way, to give more time for De Berenger to reach Dover, and to discountenance the evidence that he was in London on the evening of Sunday. If, therefore, you are of opinion that this untruth did not proceed from a wilful and corrupt mind to cause De Berenger and the others to be convicted; but that it originated in some inadvertence or confusion of one Sunday with another, the defendant will be entitled to your verdict. . . . . I must observe that a very extraordinary state of things appears on the present occasion to be presented to you. We must assume that the prosecution is set on foot by some one or more of the persons who were the defendants on the former trial, because the perjury is assigned to have been committed with intent to injure them; yet the only evidence they allege and prove to be false, is evidence, not absolutely immaterial, but certainly much more favourable to them than the testimony they have adduced to show its falsehood. The question, therefore, you have to ask yourselves, supposing that you are satisfied that the defendant swore untruly, is whether he swore corruptly, whether it was the act of a wilful and corrupt mind of a man desirous to cause the defendants to be convicted against the due course of law and justice; and, if you are of that opinion, you will find them guilty; if rather, on the contrary, you believe that he so swore from inadvertence or confusion in his mind, then the defendant will be entitled to your acquittal.

The jury immediately delivered in their verdict—Not Guilty.

Lord Cochrane's object presumably in instituting the prosecution of Davidson was to demonstrate that his own prosecutors had not scrupled to employ false witnesses. He has also made great use of the evidence as to De Berenger being seen in a green coat at Dover. But with regard to the former point, that of the employment of perjury against him, he was certainly unfortunate in the choice of a victim. Even had Davidson been convicted, the part of the case to which his evidence had been

adduced was one that exclusively concerned the guilt or innocence of De Berenger, and it had the very prejudicial effect of recalling to the public mind the disgraceful circumstances attending the attempted *alibi*.

This is all the more remarkable when we remember that in the person of Crane, the hackney-coachman, there was a witness against whom Lord Cochrane, if the story of his 'respectable Lambeth tradesmen' were true, could very properly have proceeded for perjury. Crane had given evidence most essential to the prosecution, he was the one witness who swore to the fact of De Berenger entering the house in Green Street in a red coat; to have indicted him would have given Lord Cochrane the opportunity to call his servants, to submit them to cross-examination, and thus remedy the alleged mistake of his Counsel at the trial, and to call not only them, but those seven 'highly respectable' witnesses whose evidence both as to Crane's reported utterances and De Berenger's appearance at the coach-stand in a green coat, he had collected and put on affidavit in his letter to Lord Ellenborough.

If Lord Cochrane was innocent, it is strange that he did not adopt this course, but apparently he shrunk from submitting either himself or his servants, or the other affidavit makers, to the ordeal of a cross-examination; and the case shows that, though he afterwards claimed to be the prosecutor of Davidson, he did not care to appear as such in Court.

It may also be observed that the evidence given by the landlord at the Royal Oak, to the effect that De Berenger's portmanteau was not taken away by him, knocked to pieces the theory of the small portmanteau 'big enough to wrap a coat in,' which Lord Cochrane asserts must have contained the green coat, and goes far towards confirming De Berenger's own statement that this small portmanteau was only a bill-case. Indeed, this apparently trifling piece of evidence was, in reality, the heaviest blow that had befallen Lord Cochrane since his conviction. To appreciate it properly, it becomes necessary to pass in review the various

shifting phases which his defence had assumed since his name was first connected with the transactions of the 21st of February, 1814.

The facts hitherto detailed show that from first to last three hypotheses have been put forward to exculpate Lord Cochrane, that the first two were successively abandoned, and that the third, though still adopted, is untenable:—

1st hypothesis.—That Du Bourg and De Berenger were separate persons; the messenger who brought the news from Dover to London was clad in a red uniform; the gentleman who called on Lord Cochrane was clad in a green one. *Ergo*, they could not be the same. This is the backbone of Lord Cochrane's affidavit and Butt's pamphlet, but it is destroyed by the arrest of De Berenger, his arrival in London, and identification there with the pretended Du Bourg; and it is practically abandoned by Lord Cochrane's Counsel at the trial.

2nd hypothesis.—That, admitting Du Bourg and De Berenger to be the same person, and that De Berenger came to Lord Cochrane's house on the morning of the fraud attired as he was when he started from Dover, still, the account given by Lord Cochrane of his apprehensions about his brother and of De Berenger's application to go on board the *Tonnant* were correct; and so far from De Berenger's costume making any impression on him, he actually forgot the colour, and inadvertently described it as green in his affidavit. This was the explanation offered by his Counsel at the trial, but it failed to convince the jury.

3rd hypothesis.—That, acknowledging the identity, still the affidavit was literally correct; and whether De Berenger changed his uniform in the post-chaise or the hackney-coach, it was in *green* that he entered Lord Cochrane's house, and it was green that he wore at the interview. To this last explanation, the germs of which appear in his speech in Court on June 14th, and the details of which were gradually elaborated, Lord Cochrane has ever since persistently adhered. It necessitated the throwing over of his Counsel and solicitors, and the attacking and

misrepresenting his Judge, but it has become accepted as the accurate account of the transaction.

e.g. 'Dict. Nat. Biog.' *sub voce* Dundonald.

To support it, however, two things were necessary—De Berenger must be proved to have had a green uniform with him at Dover, and to have brought it with him on the return journey in a portmanteau, in which he replaced it by the red uniform. And on both these essential points the story, when closely investigated, breaks down, and it is the Davidson trial which administers the *coup de grâce*.

First, had De Berenger a green uniform coat? We know that he possessed one as a member of the Duke of Cumberland's sharp-shooters, but the account of that uniform given by Lord Yarmouth rendered it impossible that it could be the one sworn to by Lord Cochrane's servants, for they described the collar worn by De Berenger as green, whereas the volunteer collar was crimson. In the Davidson trial it was elicited that De Berenger came down to the Royal Oak at Dover wearing a green coat, and that has been seized upon by Lord Cochrane's advocates as supplying the necessary garment and affording proof positive of the truth of his lordship's story. But where this argument is most forcibly worked, the writer somewhat disingenuously assumes that the green coat sworn to by the witnesses in the Davidson trial was a *uniform* coat. There was not only no evidence of this, but the probabilities are all the other way. A man, engaged on a fraudulent errand, who is going to make the journey from Dover to London in a sham military dress, in an assumed military character, would hardly have come down from London to Dover in another military uniform to which he had no right. His object would be to make the two journeys in totally different characters, and for this purpose civilian dress would be far the most likely for him to adopt. Add to this De Berenger's statement, taken for what it is worth, that he never possessed a green coat (apart from his volunteer's uniform), and that he went down to Dover in an old blue one: dark bottle-green and blue are sufficiently alike to be confused, after an interval of over two years, in the memory of witnesses who have only once

'Review of the Case of Lord Cochrane,' published in 1830.

seen the garment. No stress was laid upon this coat at Davidson's trial, and the witnesses were not cross-examined as to the colour.

Secondly, had De Berenger a portmanteau with him on the return journey, so as to enable him to effect the change of dress on the way?

In Lord Cochrane's trial two witnesses, and two witnesses only, spoke to a portmanteau. Solomon swore that the man who purchased the staff officer's uniform on the 19th of February took it away with him in a small portmanteau, and Crane said that when De Berenger alighted from the coach he took out a bit of a portmanteau—a small leather one, black, as well as he could recollect—big enough to wrap a coat in. This last portmanteau we hear no more of; none of the witnesses to the Dover part of the plot make any mention of it; there is no reference to it in any of the affidavits made *previous to the trial*, either by Lord Cochrane, or by his servants, or by De Berenger's servants, the Smiths, though mention is made of the *bundle* with which De Berenger left Lord Cochrane's house. It flashes like a meteor across the path, and disappears. Nevertheless, its existence was accepted by all parties at the trial, its identity with the portmanteau sworn to by Solomon was accepted by Lord Ellenborough, and the complaint made against his summing-up in this particular was, not that he omitted to mention the fact of De Berenger appearing in Green Street with a portmanteau, but that he did not press upon the jury the fact that it was big enough to wrap a coat in.

Trial, p. 130. *supra*, p. 95. p. 128. *supra*, p. 93.

p. 488, *infra*, p. 441. Letter to Lord Ellenborough, p. 18.

To the identity of the portmanteau sworn to by Crane with that sworn to by Solomon the evidence given at the Davidson trial is absolutely fatal. It was there conclusively proved that De Berenger did not take away with him the portmanteau which he brought down to Dover, and that it remained there for months afterwards,[1] and Lord Cochrane's advocates are driven to the forlorn explanation that De

[1] Detained there, says the 1830 pamphlet (p. 28), by persons hostile to Lord Cochrane, in order to destroy evidence of De Berenger having possessed a green coat. The reader will judge as to the probability of this.

Berenger either brought the 'Crane' portmanteau inside the 'Solomon' one, or that he borrowed it from friends at Dover.

We are, I think, entitled to hear what De Berenger has to say on this subject. I should not think of asking the reader to accept any uncorroborated statement of his, but there is nothing unfair in giving his narrative to see how it conforms with other testimony, and I may remark that the 'Autobiography' makes free use of any of De Berenger's statements when they happen to be in Lord Cochrane's favour.

'Noble Stock Jobber,' pp. 88-9.

He says that on the 19th of February, at a trunk maker's in Charing Cross he bought a fair-sized portmanteau of yellow leather, 'and it will hereafter be proved that this portmanteau was left at Dover, and therefore could not be the "bit of a portmanteau" out of which Lord Cochrane would willingly conjure up a green suit of regimentals.' At the same place he asked for a leather dispatch-case, but they shewed him diplomatic paper boxes, the smallest of which was too large, and he succeeded in purchasing at a stationer's in the Strand 'a black leather bill-case, about ten inches by six inches, with a lock, and about one to one-half inch thick,' which he brought in his hand to Solomon and packed up with the coat, &c., in the portmanteau.

This black leather bill-case, then, if we are to believe De Berenger, was the small portmanteau spoken of by Shilling and Crane before the Stock Exchange Committee, and sworn to by Crane at the trial. Whether or not they could have confused the two things must remain a matter of opinion. That Shilling, a post-boy, may have described a leather bill-case, ten inches by six, as a small portmanteau, will I think be conceded; but Crane has gone further and said it was big enough to wrap a coat in.

supra, pp. 28-29.

The possession by De Berenger of a portmanteau *sufficiently large to enable him to effect the exchange of coats* stands then on the sole testimony of Crane. With the exception of Shilling, who is silent as to its dimensions, no one else on the journey from Dover to London, out of all the post-boys, landlords, loungers, and watermen, speaks a word

as to it, and the other witnesses to De Berenger's appearance at Lord Cochrane's house, and his arrival at his own lodgings, are equally silent. Lord Cochrane has devoted considerable space to demonstrating the bad character of Crane and the impropriety of believing him as to the red coat in which he swore that he saw De Berenger alight. If we are to doubt his testimony as to the coat, why should we assume that it was more correct and truthful as to the portmanteau?

If Lord Cochrane's Counsel at the trial had felt sure of their ground, and thought they could have established the possession by De Berenger of this portmanteau, 'big enough to wrap a coat in,' it may not unfairly be assumed that their tactics from the first would have been different; if they could have traced it from the Ship Inn at Dover to the door in Green Street they would have been able to give De Berenger the opportunity of 'shifting himself' in Lord Cochrane's house, before the latter's arrival, and there would have been no need to resort to the hypothesis of Lord Cochrane's mistake as to the colour of the uniform.

They did not attempt to do so, and the explanation seems to me that they dared not. This small portmanteau had been given to the world, in Shilling and Crane's evidence, by the publication of the Stock Exchange report, and such a clue could not have been neglected by those responsible for Lord Cochrane's defence. There was one person at any rate who could have given the requisite information, and that was De Berenger himself, who must have known what he had with him on the journey and what he had not. Lord Cochrane tells us that he kept De Berenger at arm's length from the time of the latter's arrest, but the same Counsel who defended Lord Cochrane were also instructed by Cochrane Johnstone's solicitors, and Cochrane Johnstone, we know, was in communication with De Berenger, had read the latter's brief, and sent a copy of it to Lord Cochrane. Hansard, vol. xxviii. p. 560.

Putting all these circumstances together, it seems more than probable that the defending Counsel did not venture to make anything out of this small portmanteau, because

they knew that it was not a portmanteau at all, but a bill-case.

If this is so, the fact that Crane's evidence was allowed to pass unchallenged by the prosecution, and was accepted by the Judge, must have come as an unexpected piece of fortune to Lord Cochrane, and it was worked for all it was worth until the evidence at the Davidson trial knocked the small portmanteau back into the obscurity from which it had emerged. It was not until fourteen years afterwards, when memory of the incidents of the trial had grown dim, that this evidence was brought out again to support the existence of a green uniform, which when closely examined it fails to do; and the detention of the portmanteau at Dover was lightly got over by an assumed loan or equally improbable wrapping up of one portmanteau within another.

The prosecution of Davidson was not the only legal proceeding in which Lord Cochrane was involved during the year 1816. On the 17th of August he appeared at the Guildford Assizes to plead to an indictment preferred against him by the Marshal of the King's Bench for his escape from prison on the 6th of March in the previous year. For what reason the prosecution was so long delayed does not appear, but the late Lord Dundonald (the son of Lord Cochrane) and Mr. Fox Bourne [1] are ready with *their* explanation :—

'Life of the Tenth Earl of Dundonald,' vol. i. p. 100.

The action had been formally commenced almost immediately after the alleged offence, but on technical grounds, and perhaps from the consciousness that he was already punished enough, it was delayed for more than a year. As the previous punishment, however, had not been enough to silence him, the Government determined to revive the old charge as a further act of vengeance. *At the special instigation of Lord Ellenborough, as it was averred, the prosecution had been renewed in May* 1816, *almost immediately after the rejection by the House of Commons of Lord Cochrane's charges against the vindictive and unprincipled Judge.*

[1] After the death of the tenth Earl, as the *Autobiography of a Seaman* stopped short with Lord Cochrane's liberation from prison, his son and Mr. H. R. Fox Bourne brought out in 1869 two companion volumes to complete it.

It is difficult to write temperately about such a passage as that I have printed in italics. The writers do not venture to give any authority for this most serious imputation; and one might ransack the English language without finding two epithets more ludicrously inappropriate to Lord Ellenborough than 'vindictive' and 'unprincipled.'

Professor Laughton, in his article on Lord Cochrane in the 'Dictionary of National Biography,' gives another explanation on Lord Cochrane's authority:—

> In August 1816, immediately after a stormy meeting at the London Tavern, and, *as Cochrane maintained*, in order to punish him for the very prominent part he had taken, he was brought to trial.

William Jackson, however, Lord Cochrane's 'friend and secretary,' of whom more hereafter, says that the trial had been put off till August owing to a flaw being found in the indictment. The meeting referred to by Professor Laughton was one held at the City of London Tavern on July 28, which was convened under the auspices of the 'Association for the Relief of the Manufacturing and Labouring Poor,' to raise a fund for the relief of the then widely prevalent distress. The Duke of York was in the chair, supported by the Dukes of Kent and Cambridge, and Wilberforce was among the speakers.

p. 14 of his evidence before the Committee of Privileges, 1862.

Lord Cochrane attended with a large following, and tried to turn it into a forum for the discussion of general politics, with the result that the meeting was broken up with its objects only partially accomplished. He is alleged in after years to have heartily regretted his conduct on this occasion as being extravagant and factious.[1]

To return, however, to the Guildford trial. Mr. Marryat, in opening the case for the prosecution, said that the object

[1] The comment of his son and Mr. Fox Bourne is curious. 'By exposing what appeared to him and many others to be the hypocrisy of seeming philanthropists, and showing what he deemed the only real cause and the only real remedy of the national distress, he only acted as a brave and honest man, and his work was appreciated by the masses in whose interest it was done.'

'Life of the Tenth Earl of Dundonald,' vol. i. p. 99.

of the Marshal of the King's Bench was to vindicate his character from the charge of connivance at Lord Cochrane's escape.

The latter is made to say, in a so-called autobiographical fragment, contained in the continuation of his life:—

'Life of the Tenth Earl of Dundonald,' vol. i. p. 101.

> I took neither counsel nor witnesses, having determined to rest my case on the point of law that 'no Member of Parliament can be imprisoned either for non-payment of a fine to the King, or for any other cause than treason or felony or refusing to give security to keep the peace;' my inference being that, as I was illegally imprisoned, I had committed no illegality in escaping.

In the course of his speech, which was a written one, Lord Cochrane dwelt very forcibly on the hardships he had suffered in the strong room of the King's Bench, whence he said he had finally been removed on doctor's certificate, and he produced a decided effect on the jury. Into the legal argument I do not propose to follow him, but some remarks bearing on the conduct of Counsel in the trial of June 1814 ought not to be omitted.

Lord Cochrane said that conceiving that the injustice done to him on a former occasion was in part attributable to the conduct of his Counsel, he had resolved on this occasion to appear in his own defence. In a late prosecution which he himself had undertaken for the purpose of convicting an individual of gross perjury on his own trial for an alleged fraud, when he had the benefit of Counsel, he was unsuccessful. On the former occasion his instructions had been disobeyed—from what motive he was at a loss to discover, *for it could not for a moment be supposed that an additional fee of fifty guineas for doing nothing could have produced any effect on the minds of gentlemen at the Bar.* His Counsel had thought proper to unite his defence with that of the other defendants on the record, and had thereby acted in direct opposition to his wishes. He meant not to ascribe this to any improper motive on the part of his Counsel, but he felt it his duty to state that, whatever might have been the cause, the effect was peculiarly unfortunate to him. He had also to remark that the Counsel who had

This only appears in the 'Times' report, Aug. 19, 1816.

Hone,s edition, p. 16.

appeared against him on that occasion had actually received retaining fees from him, had attended consultations on his case, and yet, to his astonishment, appeared in the list against him. Here Mr. Justice Burrough interposed, saying, 'Such imputations are extremely improper,' and, before Lord Cochrane could continue, Gurney rose up in Court and said:—

'My Lord, they are not true. I never was retained by the noble lord in the case to which he alludes. I was indeed consulted on the part of the noble lord respecting a prosecution for a libel, and I wrote my opinion on that subject. Three weeks after I was offered a retaining fee in the prosecution against the noble lord, but I, of course, refused to accept it, having been already engaged against him, and it was not for six months afterwards that I heard a doubt suggested of the propriety of my conduct.'

Compare, *supra*, p. 58.

When Gurney had sat down the Judge said, addressing him, 'No one believes, Mr. Gurney, that you could have done anything inconsistent with your character as a barrister and a gentleman.' Lord Cochrane still persisted, 'I can only say such charges were made in my attorney's bill to me.'

At the conclusion of Lord Cochrane's address, Mr. Marryat expressed a hope that the noble lord would call some evidence 'after the extraordinary speech he has made,' *so as to give the Counsel for the prosecution an opportunity of replying to attacks which otherwise must go unanswered,* attacks which referred not only to Gurney's conduct but to the alleged ill-treatment in prison after the escape and recapture. Lord Cochrane did not comply with this request.

In summing up, the Judge said that he had not been able to discover a single sentence of the noble lord's speech which directly or indirectly applied to the issue which they were called upon to try. The noble lord had detailed charges against the Marshal of the King's Bench, which, even if well-founded, had nothing in the world to do with the conduct imputed to his lordship; but which, as they could not be answered,[1] it was inconsistent with the prin-

[1] Because he had called no witnesses.

ciples of justice and of honour to have made. The only question for the jury was: whether Lord Cochrane had been committed to the custody of the Marshal of the King's Bench for a given period? and if he had been so committed, whether he had not been found at large before the expiration of that period? That he had been committed was proved by evidence of the most incontrovertible description, and that he had escaped was as clear as the sun at noonday.

The jury returned the verdict: –

We are of opinion that Lord Cochrane is guilty of escaping from prison, but we recommend him to mercy, because we think his subsequent punishment fully adequate to the offence of which he was guilty.

The trial had taken place after Term, and then the Long Vacation ensued, so that it was not until November that judgment was moved for in the King's Bench. Lord Cochrane was condemned to a fine of £100 to the Crown, which he refused to pay, and was accordingly again taken into custody, but the money was raised by his constituents, and he was released once more.[1]

This public subscription had a curious sequel. On the 19th and 20th of December, 1817, William Hone was tried before Lord Ellenborough for publishing blasphemous parodies. He was acquitted, and on the 29th of the same month a public meeting was held at the City of London Tavern to raise a subscription to indemnify him for his expenses incurred 'in so nobly and successfully struggling against Ministerial persecution.' In the course of the proceedings Lord Cochrane made a long speech,[2] in which his lordship adverted to the sentence that had been passed on him upon an unjust conviction for breaking out of prison. A fine of £100 had been thus imposed on him; but sooner than have paid that fine he would have remained and rotted

[1] As to the story of the penny subscription by which it was said to have been defrayed, see note to p. 369, *infra*.

[2] 'Proceedings at the Public Meeting for the purpose of enabling William Hone to surmount the difficulties in which he has been placed by being selected by the Ministers of the Crown as the object of their persecution.' Seventh edition, p. 13.

in prison; his constituents paid it for him, and relieved him from his most painful situation. That money he wished now to return, and with feelings of heartfelt thankfulness to Mr. Hone for his manly and able exertions[1] in defence of the liberties of the people, he would now lay down the one hundred pounds which he then held in his hands in addition to the sums already subscribed for him.

[1] Yet in the *Autobiography of a Seaman*, vol. ii. p. 379, Lord Cochrane is made to say, 'I know nothing of Hone's works, nor of the libels of which he was accused.' See *infra*, p. 355.

CHAPTER XI

PARDON AND RESTORATION TO RANK AND HONOURS

In the spring of 1817 a representative of the Provisional Government of Chili visited England with the object of obtaining assistance for his fellow-countrymen who, like the rest of the Spanish colonists in the New World, were engaged in trying to sever the bonds that connected them with their mother country. This struggle had now been raging in Mexico and throughout Spanish South America with varying fortune for seven years, but in the maritime provinces of Chili and Peru the naval strength of the Spaniards rendered the ultimate success of the insurgents very doubtful, and it was to procure ships and money, and, if possible, a capable and experienced naval officer to take command of their fleet, that the Government had despatched their Envoy to Europe.

A Foreign Enlistment Act, which was known to be in contemplation, had not the same terrors for Lord Cochrane that it had for naval officers with commissions to lose. His brilliant nautical reputation in the past, and his well-known political sympathies, rendered Lord Cochrane a peculiarly appropriate choice; the offer of the entire command of the Chilian navy, with the rank of Admiral, was made to and accepted by him, and in August 1818 he sailed for Valparaiso, having made his final speech in Parliament on the 2nd of June.

Before leaving England, however, the memories of his trial and conviction were once more revived by proceedings in a Court of law, this time through the agency of Mr. Butt. It appears that, on the expiration of his term of imprisonment, owing to the laxity of the management of

the King's Bench Prison, Mr. Butt had walked out, leaving his fine unpaid, and pretending that he thought it had been remitted. He was speedily re-arrested, and, after a short interval of imprisonment, paid up his money to the Marshal of the King's Bench, who handed it over to the Master of the Crown Office, by whom it was in due course accounted for to the Exchequer. On his final liberation he disappeared for some time, and afterwards asserted that he had gone to the West Indies in search of Cochrane Johnstone, but he seems to have been back in London towards the end of 1816. Whether his imprisonment and pecuniary losses had really unhinged his mind it is impossible to say, but his conduct on his return showed few traces of the shrewd and sagacious speculator of 1814. In some way or other he discovered that the Bank[1] into which the Master of the Crown Office paid the fines and other official moneys which passed through his hands was the one in which Lord Ellenborough's own account was kept, and he seems to have convinced himself that his fine of £1,000 had gone into the Lord Chief Justice's pocket. To this creation of a diseased imagination, though indeed it was scarcely a graver charge than was conveyed in the accusations which Lord Cochrane himself brought against his Judge, Mr. Butt gave publicity in every possible way, by writing, by presenting petitions to Parliament, and by applications to magistrate after magistrate. Finally, in March 1817 he went the length of printing a large number of handbills containing the following definite assertion :—

Butt's Trial, p. 112.

Fair Play is a Jewel.

Whereas Lord Chief Justice Ellenborough has committed a robbery of One Thousand Pounds upon me by passing a sentence to make money and to put the King's Fine into his own pocket, instead of going into the public treasury; I do, hereby, placard him as a disgrace to the Bench of Judges, the Society of Gentlemen, and to the nation at large.

R. G. Butt.

Of this handbill he caused numerous copies to be posted

[1] Goslings.

at Westminster in the most conspicuous position, so that no one going down to the Courts in Westminster Hall could fail to observe them.[1]

In quieter times and under ordinary circumstances such an exhibition of impotent rage might well have been treated with contempt. But the times were not ordinary, and this attack was only the climax of the volume of misrepresentation and abuse to which the Lord Chief Justice had been subjected ever since the Stock Exchange prosecution three years before. The Government accordingly resolved to prosecute Mr. Butt for libel on Lord Ellenborough, and also for another libel which he had published simultaneously against Lord Castlereagh, and in which he reiterated the charge that he had been 'unjustly convicted by Lord Ellenborough to make money of me.'

The trials took place before Mr. Justice Abbott and a Special Jury in the Court of King's Bench on the 24th of May, 1817. Whether Mr. Butt had the same distrust of Counsel's advocacy which Lord Cochrane gave vent to at Guildford I do not know, but he appeared for himself, and obtained in consequence that latitude in the conduct of his case which an English Court never fails to extend to prisoners who are not professionally represented. He attempted to justify his libels, and succeeded in proving even more satisfactorily than the prosecution could have done how utterly destitute of foundation they were. He had summoned an enormous number of witnesses to prove many quite irrelevant matters.

[1] I do not know whether it was some echo of this handbill of Mr. Butt's which inspired the following passage in a Review of Mr. Henty's work, *With Cochrane the Dauntless*, published in the *Daily Chronicle* of October the 28th, 1896. 'The bare record of the life of such a man, rewarded in our own country by *the fines of a corrupt judge*, and the lasting hatred of his superiors, is in itself a homily upon courage.' That it should be possible for the Editor of a London daily paper to pass such a sentence is justification in itself for the appearance of this book. It is curious to contrast with it a sentence taken from the same paper a few months earlier in a review of Mr. Fortescue's sketch of Lord Cochrane: 'He (Lord Cochrane) got mixed up in some scandalous and fraudulent Stock Exchange transactions . . . it is now admitted that he was more sinned against than sinning.'

Some of them, including Lord Holland,[1] Mr. Vansittart, and Sir Francis Burdett, actually attended and gave evidence, but a good many stayed away, and, like Fairfax at the trial of King Charles, 'had more wit than to be there.' Amongst these latter was Lord Cochrane, of whose absence Mr. Butt complained bitterly, saying that he had refrained from serving him with a subpœna because he had told him that he should be in Westminster Hall by nine o'clock. 'I trusted to his honour—he assured me he would be here by nine o'clock this morning, and he has not kept his word.' Butt's Trial, pp. 11, 84.

In the result Butt was convicted, and was brought up before the Court of King's Bench for sentence on the 23rd of June.

The Chief Justice of course took no part in the deliberations, and Mr. Justice Abbott, Mr. Justice Holroyd, and Mr. Justice Bayley composed the Court. The evidence was read through. Butt put in a pile of affidavits reasserting the truth of his accusations, and addressed the Court at considerable length, after which the Judges deliberated, and a sentence of nine months' imprisonment was imposed for the libel on Lord Ellenborough, and one of six months for that on Lord Castlereagh. p. 182.

The sentence was pronounced by Mr. Justice Bayley, and as he was one of the Court which had imposed the original sentence in the Stock Exchange prosecution, I feel bound to quote a passage from it to show the injustice of the statement that that sentence was Lord Ellenborough's own, in distinction from being that of the Court.

It appears that you, among others, were put upon your trial in this Court, and were convicted by a jury of your country of a particular offence. Of the nature and extent of that offence I shall now say nothing further than this, that upon a very cool, p. 125.

[1] Lord Holland's examination may be given as a sample of the evidence called:— p. 48.

Q. I believe I applied to your lordship to bring certain things before the House of Lords on this subject?—*A.* Yes, you did.

Q. And your lordship thought proper to decline it?—*A.* I did.

I shall not trouble your lordship any further.

careful, and deliberate consideration of all the circumstances of the case, the Judges of the Court each formed his own opinion for himself, and thought that they could not, consistently with the demands of justice, pronounce a different judgment from that which in that instance they did pronounce. *That was not the sentence of Lord Ellenborough unconnected with the other Judges of the Court, but on this occasion, as upon all other occasions of sentence, each Judge has an equal voice with all the rest; and I will say this because I know it, that I know of no instance where the Judges have been overborne by the opinion of any other Judge.*

Lord Cochrane reached Valparaiso in November 1818, and was in the service of the Chilian and Peruvian Governments until January 1823; he then transferred himself to the Emperor of Brazil, whom he assisted in his struggle against Portugal from April 1823 to November 1825. His exploits in the Western Hemisphere have been fully recounted by his own pen, and are beyond the scope of this narrative. It is matter of common knowledge that under his auspices the Spanish vessels were either captured or driven from the Pacific, and the cutting-out of the *Esmeralda* from under the guns of Callao will live in naval history as one of the smartest feats of that description on record. But in South America, as in Europe, Lord Cochrane's career was clouded by misunderstandings and disputes, and his pecuniary claims on the Governments that employed him remained unsatisfied up to the hour of his death, and were the subject of constant and angry remonstrance.

On his return to England in 1825, Lord Cochrane's position was entirely transformed from what it had been on his departure. The sordid memories of the Stock Exchange trial had faded, his indiscreet conduct on his liberation from prison was forgotten, and men of all parties were eager to welcome the gallant sailor who had maintained his country's renown under foreign skies and an alien flag. Nor was his popularity lessened by the course which he immediately took of placing his services at the disposal of Greece, then in the final stage of the War of Independence. Here he was not fated to meet with the success

that had attended him in the Pacific, and the battle of Navarino put an end to the war. But to have fought for a cause consecrated by the genius and the death of Byron, was in itself a high recommendation to the gratitude and admiration of his countrymen.

As early as 1825 he had made a claim for the re-investigation of his case and for his re-instatement in the Service, in a letter to Lord Melville, who was still First Lord of the Admiralty. Neither the original nor any copy of this letter appears to exist, but on the 4th of November in that year Lord Melville wrote to him saying that he did not consider himself at liberty to recommend to his Majesty to institute the suggested inquiry.

Select Committee of 1877, Report, par. 6.

Though Lord Cochrane did not finally quit the Greek service until 1829, he was in England in 1828, and on the 4th of June in that year he addressed a memorial to the Duke of Clarence, then Lord High Admiral, with a request to represent his case to the King and to advocate his cause with a view to his re-instatement in the Navy. The memorial contained a most solemn asseveration of his innocence of any participation in the fraud, and some portions of it deserve to be quoted.

par. 7.

That it was your memorialist's consciousness of innocence that contributed perhaps more than any other cause to produce his conviction, because it rendered him confident and much less careful in making the necessary preparations for his defence than he ought to have been, or than he would have been, if guilty: while, on the other hand, there existed the utmost zeal, industry, and skill in the conduct of the prosecution. That your memorialist did all that was possible to procure a revision of his case; but as he had laboured under the disadvantage of being included in, and tried under the same indictment with some who had probably no reason to complain of the result, as well as the still greater disadvantage of having his defence blended with theirs, so was he denied a new trial for the same reason; it being a rule of Court that a new trial should not be allowed to any individual tried for conspiracy unless all the parties should appear in Court to join in the application, which in the case of your memorialist could not possibly be, some of the parties having quitted the country on the verdict being pronounced against them.

Evidence, answer 4.

Lord Cochrane was well advised in the tone taken by him in the memorial, and there is a complete absence of those wild charges against all concerned in the prosecution, and particularly against his Judge, which have become so familiar to us. Had he and his advocates maintained this attitude there would have been no need for this book. The only answer to it was a brief reply, dated the 14th of June: 'The King's Cabinet cannot comply with the prayer of the memorial.'

Select Committee of 1877, Report, par. 7.

Brighter times, however, were in store. George IV. died on the 26th of June, 1830, and was succeeded by the Duke of Clarence. It was clear to all beholders that the long years of Tory Government were drawing to their close. The days of July in Paris gave the final shock, and on the 16th of November the Government was defeated. Earl Grey became Prime Minister. For the first time since their short-lived tenure of office in 1806–7, the Whigs were in power and place; and in the Cabinet, as Lord Chancellor of England, sat Henry Brougham, who had been one of Lord Cochrane's Counsel in 1814. The moment seemed propitious, and his friends lost no time in preparing a detailed statement, a copy of which was forwarded to King William IV. on the 10th of December, 1830.

Evidence, answer 8.

This statement was contained in a book of one hundred and ten pages, entitled 'Review of the Case of Lord Cochrane.' It does not appear whether it was published; at any rate no publisher's name appears; the name of the author is not given, and in 1877 the present Earl of Dundonald was unable to say for certain whom it was drawn up by. Whoever the author may have been, the book is an exceedingly able production.

In this 'Review' (sometimes referred to previously as the 1830 pamphlet), the story of De Berenger's visit to Green Street, and the history of the bank notes found in De Berenger's possession, are treated at great length, in general accordance with the version already commented on in the 'Letter to Lord Ellenborough,' and an exhaustive account is given of Lord Cochrane's Stock Exchange transactions. Needless to say the case set up in it for Lord

Cochrane differs absolutely from that presented by his Counsel at the trial, and from the tissue of contradictions and inaccuracies contained in the 'Autobiography of a Seaman.'

It is not in my province to express an opinion as to how far it may have been successful in establishing his innocence in the eyes of William IV., but of one point there can be no doubt, and that is, that it is absolutely conclusive as to the futility of the gross charges brought against Lord Ellenborough.

The foundation of the book is the mismanagement of Lord Cochrane's case by his legal advisers, solicitors, and Counsel alike, and especially the wrong done to him by uniting his defence with that of Cochrane Johnstone. Such sentences as the following may be found on almost every page:—

If the dealings of Lord Cochrane in the funds had been contrasted at the trial with those of Mr. Johnstone, as they ought to have been, they would have furnished no evidence of Lord Cochrane's guilt, but the strongest presumptive evidence of his innocence. 'Review of the Case of Lord Cochrane,' p. 11.

So wretchedly was the defence of Lord Cochrane conducted that the Counsel who addressed the jury in his behalf did, in effect, admit that the dress in which he saw De Berenger was the red dress of the Fraud. p. 19.

His solicitors suffered him to go to trial ignorant of the evidence which his own Brief was made to bear against him. p. 22.

Mr. Butt ascribes the omission to his Counsel and with great appearance of justice; a real receipt or acknowledgment from Mr. Johnstone to Mr. Butt existed, but was not brought forward. The unfortunate determination of Counsel to defend the parties conjointly appears to have been the real cause of this injustice to Mr. Butt. p. 76.

Mr. Hichens would doubtless have given the same evidence at the trial had the question been put; and great wrong was done to Lord Cochrane and Mr. Butt by their Counsel in not putting that question, and commenting on the evidence which that answer would have afforded. p. 85.

When this line of argument is adopted, it is tantamount to an admission that Lord Cochrane's conviction, if he was an innocent man, was owing, not to the Judge who tried

him, but to his own solicitors and Counsel; and the question lies between Lord Cochrane and them, not between Lord Cochrane and Lord Ellenborough. 'It was not the Judge's fault, if the prisoner's Counsel, in the exercise of their discretion, declined to place in the witness-box, and subject to cross-examination, persons whose evidence, in the opinion of the prisoner, might have given a different complexion to the case.'

Hon. H. S. Law, Introduction to reprints from 'Law Magazine and Review' (1877), p. 6.

How far this accusation of neglect and incapacity has been made out I leave to the judgment of those who have read the preceding pages, and who will form their own opinion as to how far a firm of solicitors, then as now famous for their zeal and ability, and a group of the ablest and astutest advocates who have ever practised at the English Bar, were culpable in their management of Lord Cochrane's case.

Another feature which is very noticeable in the book is the absence of the fierce invectives against the Judge and prosecutors, of the charges of conspiracy and corruption, of the imputations on the Government and the Admiralty. These had been plentiful enough in Lord Cochrane's earlier speeches and writings, and they were destined to reappear again; but they were intended for a class of audience very different to that which this carefully reasoned work was addressed to. Of course I do not pretend that the writer in any way withdraws from the position that Lord Ellenborough misrepresented the evidence and identified himself with the view put forward by the prosecution. A sentence from one of the last pages may be taken as a sample:—

'Review of the Case of Lord Cochrane,' p. 105.

It is impossible to contend that Lord Cochrane had a fair trial, or anything that bore the slightest resemblance to a fair trial, while such assertions as these could be made by the Judge in his charge, representing the parties as all acting in concert and having an equal and reciprocal interest and hazard in each other's accounts, so directly contrary to the real facts.

Whether Lord Ellenborough did misrepresent the real facts, and put strained or forced constructions upon them,

suppressing what was favourable to the prisoners and dwelling on all that told against them, can only be determined by comparing the evidence with his summing-up. The chapters in this volume devoted to the trial contain what I believe to be an absolutely accurate summary of the evidence; the whole of the Judge's summing-up and the complete report of the Trial given in the 'Times' are printed in the Appendix. I have already expressed my own opinion, but it is a matter in which every man must judge for himself. It is a fair challenge, and one from which no believer in Lord Ellenborough's integrity would shrink. But at the same time I am bound to insist that his summing-up should be tested by the evidence given in Court and not by a fanciful representation of evidence which was never tendered.

One or two other cautions are necessary. The writer adopts the supposition that Crane's evidence as to the colour of De Berenger's coat was false, and that the various affidavits produced by Lord Cochrane after the passing of the sentence were true. It is right to point out that none of these latter were ever subjected to cross-examination or tested in any way, and that the author is entirely at variance with Lord Cochrane's solicitors as to the method in which they examined the servants previous to the preparation of the Brief. A great point also is made of the discovery, elicited on the trial of Davidson for perjury, that De Berenger arrived at Dover in a coat described by two witnesses as being dark green, and this is assumed to have been the identical coat worn by him in Lord Cochrane's presence. The writer, however, omits the fact that Lord Cochrane over and over again has asserted that De Berenger appeared before him in [1] *uniform*. As we have seen, there was nothing in Davidson's trial to show that the coat so worn by De Berenger at Dover was any part of a uniform; the inference is all the other way; and that being the case, the proof of his being possessed of a green morning coat does not in any way assist Lord Cochrane or corroborate his statement.

'Review of the Case of Lord Cochrane,' pp. 20, 21.

p. 27.

supra, p. 261.

[1] *E.g.* in the original affidavit of March the 11th, 1814. As late as 1847, Lord Cochrane, in *Observations on Naval Affairs*, says that De Berenger came to him in his *sharp-shooter's dress*.

p. 145.

No better Brief could have been desired by any one wishing to plead Lord Cochrane's cause, and no better excuse could have been provided for a Sovereign and his advisers anxious to express their appreciation of his brilliant services, and to signify that, guilty or not, he had been punished sufficiently, and that the offence of which he had been convicted was now more than expiated. The copy of the 'Review of the Case' transmitted to the King was accompanied by a short memorial in the form of a letter, which is added as a Preface to some of the printed copies.

Select Committee, 1877, Evidence, answer 8.

The receipt of these documents was acknowledged on the 18th of December by Lord Melbourne, who informed Lord Cochrane that 'His Majesty had returned the letter to him, but has not been pleased to signify any commands.' What took place with regard to it we are therefore unable to say, but, for fifteen months, no active steps followed. Lady Dundonald, however—for in the interval Lord Cochrane had succeeded to the Peerage by the death of his father on the 1st of July, 1831—succeeded in penetrating to the presence of William IV., and there pleading her husband's cause. On the 24th of March, 1832, a free pardon was granted to Lord Dundonald by the King, and in order to give full effect to this Act of Grace, it was recommended by the Admiralty, and his Majesty in Council was pleased to order (on the 2nd of May, 1832) 'that the Earl of Dundonald should resume his place on the list of Rear-Admirals of His Majesty's Fleet, which situation he would have been entitled to hold if he had not been removed from the list, and that the said Earl of Dundonald be and is hereby reinstated in his rank and station accordingly, and that his half-pay do commence from the date of this Order.'

Report, par. 8.

'Observations on Naval Affairs,' 1847, p. 71.

Select Committee 1877, Report, par. 9.

Evidence, answer 23.

The Warrant for the Pardon was made out on the 26th of July, 1832, under the hand of 'T. Denman, Lincoln's Inn,' and is expressed to be in pursuance of a warrant under His Majesty's Sign Manual, countersigned by Lord Melbourne, and it recites that 'Whereas upon consideration of some circumstances humbly represented to us on behalf of the said Thomas, Earl of Dundonald, We are

graciously pleased to extend our grace and mercy unto him, and to grant him our free pardon for the said offences whereof he hath been convicted as aforesaid.'

In connection with the grant of the pardon it is only right to quote the words of Lord Melville in his letter of November 4th, 1825: 'I apprehend that nothing but a free pardon from the Crown can now do away the effect of the verdict and sentence in your lordship's case; but unless the Secretary of State and the Law Officers of the Crown were satisfied that such verdict and sentence were unjust, and ought not to have been pronounced, His Majesty would not be advised to grant a free pardon.' I humbly submit that Lord Melville was incorrect in stating the grounds on which pardons are accorded, or the inferences that must necessarily be drawn from them. A pardon may be granted on many grounds, and is consistent with either guilt or innocence; subsequent or previous services, or the fact that the punishment has entailed consequences out of all proportion with the sentence itself, have over and over again won the pardon of prisoners who are confessedly guilty; and in the case of the innocent it may well be, and in the overwhelming majority of cases is, due to the fact of evidence coming to light which was unknown or unavailable at the trial. I have no knowledge of the number of pardons that are annually granted in the United Kingdom, but of this I am sure, that it is the very rarest occurrence for them to be bestowed on the ground 'that the verdict and sentence were *unjust*, and ought not to have been pronounced.'[1] In the name of the jury and Lord Ellenborough,

Select Committee, Report, par. 6.

[1] In confirmation of this let me add the words of Lord Cochrane's own Counsel, Lord Brougham, who in a letter of March 29th, 1844, quoted in the *Autobiography of a Seaman*, vol. ii. p. 324, confined himself distinctly to saying that in the opinion of himself and his colleagues the verdict against Lord Cochrane was *erroneous*, 'and I always concluded that you had sacrificed yourself out of delicacy to your Uncle.'

The law officers at the date when the pardon was granted were Sir Thomas Denman (afterwards Lord Chief Justice of the Queen's Bench), Attorney-General, and Sir William Horne, Solicitor-General. The present Lord Dundonald, in a letter to the *Times* of August 20, 1889, says, 'both these' (Lord Brougham and Lord Campbell) 'were the great law officers of the Crown, the one being Lord Chancellor and the other Solicitor-General at the time of his restoration to the navy, and therefore to their opinion as great

who tried the case, and of the upright and distinguished Judges who inflicted the sentence, I protest against any such inference being drawn. Nor am I alone in this contention. Lord Dundonald himself to the last hour of his life protested that he had never had a 'revisal of the verdict pronounced against him and the sentence passed upon him in the year 1814.' [1]

See 'Observations on Naval Affairs,' p. 168.

In 1841 Lord Dundonald's reinstatement in the Service was still further marked by the conferment of a pension for good and meritorious service; but without his restoration to the Order of the Bath the effect of the pardon was still incomplete. Lord Brougham informed Lord Dundonald in a letter dated the 29th of March, 1844, that William IV. only objected to the Bath 'being restored *at the same time* with your rank, and not absolutely at all times.' Previous to this Lord Dundonald had, in the year 1842, applied through Lord Haddington for his restoration, and had been refused. Nothing daunted, and fortified by the assurance contained in Lord Brougham's letter, he presented in 1844 another memorial to Sir Robert Peel, who was then Prime Minister, praying for a revisal of the verdict pronounced against him, and for his restoration to the Order of the Bath. He received a reply, 'That Her Majesty's servants cannot, consistently with their sense of public duty, advise the Queen to re-open an inquiry into the charges.'

Select Committee, 1877, Evidence, answer 108.

Report, par. 10.

par. 11.

Lord Dundonald was, however, restored to his honours in 1847, shortly after the publication of the work mentioned in the next paragraph. Yet for some reason which, as far

par. 12.

lawyers must be further added the weight of official responsibility.' It is not accurate to describe the Lord Chancellor as a law officer, and I doubt whether he is consulted, at any rate officially, in such matters. Lord Brougham's testimony to the impartiality of Lord Ellenborough at the trial is as emphatic as words can make it. Lord Campbell was not made Solicitor-General for some months afterwards (November 24th, 1832), and the next chapter will, I think, afford evidence of the extent of his acquaintance with the facts of the trial.

infra, p. 324.

'Life of Lord Campbell,' vol. ii. p. 19.

[1] In the *Autobiography of a Seaman*, vol. ii. p. 318, he is represented as saying, '*That unjust public sentence has never been publicly reversed, nor the equally unjust fine inflicted on me remitted.* . . . The Government of my country has, though often invoked, refused to reinvestigate my case, as impossible in form, and from fear of creating a precedent.'

as I know, has never been explained, his banner was not replaced in Henry VII.'s chapel until a few hours before his funeral. Select Committee, Report, par. 16.

On the 11th of January, 1848, Lord Dundonald was appointed to the Command-in-Chief of the North America and West India Station, which he held till 1851. In the year immediately preceding this appointment he had published a small book, entitled, 'Observations on Naval Affairs and on some Collateral Subjects, including instances of Injustice Experienced by the Author.'[1] Amongst many other matters, this work contained a memorial on the subject of his conviction, and a statement embodying his own account of the incidents which led up to it. To the best of my belief, this is the last statement put forward by Lord Cochrane of his own case, for, as will be seen later on, I cannot accept the chapters on this subject in the 'Autobiography' as coming from his pen; and as it is a very clear condensation of what has been so often urged in his behalf, I quote some of the most important passages. par. 18.

That your memorialist most respectfully assures you that if it had been shown that he laboured under no unfair disadvantage in being tried and defended jointly with guilty parties, of whose guilt he, if innocent, could have had no previous knowledge; or if it had been shown that he was not thereby placed in a position which prevented evidence from being adduced in his favour, which might have proved unfavourable to one or more of his co-defendants; or if it had been shown that there could have been no evidence at once favourable to him and unfavourable to them; or that he has subsequently failed to bring such evidence forward; or if it could be shown that his consanguinity to one of the parties had not that operation to his prejudice which, in strict justice, it ought not to have had; or if it could be shown that there were no false witnesses on the part of the prosecution; or that the false evidence of such witnesses did not materially affect your memorialist's case; or if it can be shown that he subsequently failed to prove that there was such false evidence, or to show in what manner it was injurious to him; or that he has failed to prove that it was given in lieu of true evidence that 'Observations on Naval Affairs,' p. 73 *et seq.*

[1] The occasion of this book was an order sent out by the Admiralty to all naval officers of a certain rank to make a return of their services.

would have materially tended to prove his innocence; or if it can be shown that there was no other false evidence against your memorialist; or that the principal witness against him was a credible person, or had not himself been convicted of any atrocious crime; or even if it could be shown that his evidence, true or false, coupled with all the other evidence in the cause, was demonstratively conclusive of any knowledge whatever on the part of your memorialist of the crime that had been committed; or if it could be shown that everything proved to have occurred could not have occurred consistently with your memorialist's entire innocence; or that everything proved to have occurred could have occurred consistently at once with his guilt and mental sanity; or if it could be shown that your memorialist ever acquiesced in the verdict against him; that he did not promptly use every effort in his power to obtain a new trial; that he ever ceased to assert his absolute innocence or ever neglected to put forward, at every available opportunity, the facts and arguments (hitherto unanswered) by which he conceives his innocence to be proved; or if it had been shown that the jury could not have formed an erroneous judgment; or that the Court could not have been in error in refusing further inquiry—that if all this, and not the reverse of all this, had been, could, or can be shown, and was and is the truth—your memorialist most respectfully assures you, that he would not at this distance of time attempt to revive the question, but would admit the lapse of thirty years to be a valid reason for declining to disturb the verdict. But as no lapse of time can give sanctity to error, and as your memorialist is not accountable for the long lapse of years by reason of any remissness on his part; as he has never rested passive under the verdict against him, and has never been wanting in bringing forward (as he best could) those facts and arguments by which he conceives its erroneousness to be proved; and as there have been instances not a few of the fallibility of both judges and juries, especially in cases where, as in the case of your memorialist, the evidence was circumstantial only; and as it has not been shown that there was no error in the verdict as against your memorialist; but as, on the contrary, there are numerous reasons to believe (as set forth or referred to in the accompanying statement) that there was such error; and as in addition thereto your memorialist is authorised to state that his Counsel at the trial were clearly of opinion that the verdict, so far as it applied to your memorialist, *was erroneous*; your memorialist submits that the length of time which has elapsed

since such verdict was pronounced is no valid reason for permitting it to go for ever unrevised; but is, on the contrary, a cogent reason wherefore it should now be revised without further delay; for while it is obvious that lapse of years cannot add to the justice of that verdict, if just it was, it is equally obvious that it must have been added, and does add daily, and (if ever disturbed) must for ever increasingly add to and aggravate its injustice, if just it was *not*. And that, therefore, your memorialist humbly claims at this late hour a serious and patient consideration of the grounds on which he ever has, and still does, maintain that it was erroneous and unfounded.

The 'recapitulation of the principal facts of my case' is too lengthy to admit of being here given. It will be found at p. 141, *et seq.*, of the 'Observations,' and is for the most part an epitome of the facts stated in the 'Letter to Lord Ellenborough,' the 'Articles of Charge,' and the 'Review of the Case of Lord Cochrane.' There is one passage, however, which must for several reasons be quoted.

Of a piece with this injustice was the conduct of the Court in compelling my Counsel to enter on the defence at a late hour of the night, when they declared themselves exhausted, and in delivering a charge to the jury, unexampled in point of partiality since the days of Judge Jeffreys: and in refusing to hear me in application for a new trial (under the frivolous pretext before mentioned) until they were about to pass their infamous sentence, and in rejecting the testimony which I then offered under pretence of its legal inadmissibility. Had there not been a pre-determination to make sure of the power to degrade and punish by means of the verdict obtained, why refuse a new trial? which is so frequently granted in cases of far less importance. The result could only have been a confirmation of my guilt, if guilty I had been, and a justification of all the previous proceedings. It was not that the evidence I then offered was not sufficient to justify the granting of a new trial, but the apprehension that it might prove effectual to the rescuing my character and person out of their merciless hands—it was this which caused the Court to refuse what I, if guilty, could have had no inducement to ask, and which they, if just, could have had none to deny.

'Observations on Naval Affairs,' p. 149.

In the first place, it is to be noticed that this passage marks the abandonment of the wise and judicious attitude taken up in the pamphlet of 1830, and to which I am confident that Lord Cochrane's pardon and restoration to his rank in the Navy was to a great extent due. It is a relapse into the earlier manner of the House of Commons speeches, and the Letter to Lord Ellenborough, with the addition of the ludicrous but offensive comparison to Jeffreys. Nor have we to chronicle any return to saner paths. The line of vilification and misrepresentation, which might possibly be pardoned when proceeding from one who had suffered so much, and whose professional prospects had been ruined in consequence of the verdict of 1814, has been followed by others who have not the same excuse.

The question of the refusal of a new trial is dealt with in the next chapter, but as I have quoted this passage, I must say here one or two words with regard to it, for it seems to me to be inspired by the idea which very probably Lord Cochrane possessed, that new trials in criminal cases were matters of everyday occurrence. It is unnecessary to point out that this is not the case, that they are absolutely unattainable in treason and felony, and are confined to those comparatively rare occasions where misdemeanours are removed into the Court of King's Bench (now into the High Court of Justice), and had Lord Cochrane been tried at the Old Bailey, as he insisted he ought to have been, no application for a new trial would have been possible. Rightly or wrongly, it is the rule of our law that with these rare exceptions the verdict of a jury in criminal cases should be final; and this being so, it is imperatively necessary that a clear, nay an almost overwhelming, case should be made out for granting an indulgence so contrary to the spirit of our criminal law. Can it be contended that Lord Cochrane when he appeared before the Court was able to make out such a case? To this, I think there can be but one answer. Neither in his speech, nor in his own affidavit, did he go beyond facts that had been proved or asserted at the trial, except to throw over the statement of his own Counsel as to the colour of De Berenger's coat;

and the jury at the Trial, after long deliberation, had found themselves unable to credit the declaration as to his innocence, which he that day reiterated. The evidence of the servants might have been given at the trial, but his Counsel had not thought proper to tender it, and the affidavits of Major Cochrane and his regimental surgeon were pronounced by the Court to be immaterial to the point which they endeavoured to substantiate. I am very much mistaken if the Court of Appeal to-day would grant a new trial in any civil action on such evidence as was brought forward by Lord Cochrane.

With the relinquishment of the North American command Lord Dundonald's active career was over. His sword was tendered to his country during the Crimean war, but the veteran was nearing his eightieth year, and the work in the Baltic and Black Sea was left for younger hands. He was, however, promoted to the rank of Rear-Admiral of the United Kingdom, and in November 1854 he received a final mark of appreciation, when the Prince Consort invited him to become one of the Elder Brethren of the Trinity House.

On the 30th of October, 1860, he underwent an operation; on the 31st he passed peacefully away at the great age of eighty-five; and on the 14th of November he was buried in Westminster Abbey.

was a dangerous character. But the gallant officer really was a loyal subject, as well as enthusiastically zealous for the glory of his country. He had an uncle named Cochrane, a merchant, and a very unprincipled man, who, towards the end of the war, in concert with De Berenger, a foreigner, wickedly devised a scheme by which they were to make an immense fortune by a speculation on the Stock Exchange. For this purpose they were to cause a sudden rise in the funds by spreading false intelligence that a preliminary treaty of peace had actually been signed between England and France. Everything succeeded to their wishes; the intelligence was believed, the funds rose, and they sold on time bargains many hundred thousand pounds of 3 per cents. before the truth was discovered. It so happened that Lord Cochrane was then in London, living in his uncle's house, and was much in his company, but there is now good reason to believe that he was not at all implicated in the nefarious scheme. However, when the Fraud was detected—partly from a belief in his complicity, and partly from political spite—he was included in the indictment preferred for the conspiracy to defraud the Stock Exchange.

The trial coming on before Lord Ellenborough, the noble and learned Judge himself being persuaded of the guilt of all the defendants, used his best endeavours that they should all be convicted. He refused to adjourn the trial at the close of the prosecutor's case about nine in the evening, when the trial had lasted twelve hours; and the jury as well as the defendants' counsel were all completely exhausted, and all prayed for an adjournment. The following day, in summing up, prompted no doubt by the conclusion in his own mind, he laid especial emphasis on every circumstance which might raise a suspicion against Lord Cochrane, and elaborately explained away whatever at first sight appeared favourable to the gallant officer. In consequence the jury found a verdict of Guilty against all the defendants.

Next term Lord Cochrane presented himself in Court to move for a new trial, but the other defendants convicted along with him did not attend. He said truly that he had no power or influence to obtain their attendance, and urged that his application was founded on circumstances peculiar to his own case. But Lord Ellenborough would not hear him because the other defendants were not present. Such a rule had before been laid down, but it is palpably contrary to the first principles of justice, and it ought immediately to have been reversed.

Lord Cochrane was thus deprived of all opportunity of showing that the verdict against him was wrong, and, in addition to fine and imprisonment, he was sentenced to stand in the pillory. Although as yet he was generally believed to be guilty, the award of this degrading and infamous punishment upon a young nobleman, a member of the House of Commons, and a distinguished naval officer, raised universal sympathy in his favour. The Judge was proportionately blamed, not only by the vulgar, but by men of education on both sides in politics, and he found upon entering society and appearing in the House of Lords that he was looked upon coldly. Having now some misgivings himself as to the propriety of his conduct in this affair, he became very wretched. Nor was the agitation allowed to drop during the remainder of Lord Ellenborough's life, for Lord Cochrane, being expelled the House of Commons, was immediately re-elected for Westminster; having escaped from the prison in which he was confined under his sentence, he appeared in the House of Commons; in obedience to the public voice, the part of his sentence by which he was to stand in the pillory was remitted by the Crown, and a Bill was introduced into Parliament altogether to abolish the pillory as a punishment on account of the manner in which the power of inflicting it had been recently abused. It was said that these matters preyed deeply on Lord Ellenborough's mind and affected his health. Thenceforth he certainly seemed to have lost the gaiety of heart for which he had formerly been remarkable.[1]

Those who have followed the summary of the trial and the proceedings in the Court of King's Bench will be qualified to decide how far this is a just and accurate description of what took place, and the detailed examination into these picturesque paragraphs, which I give in the following pages, will convince them, I think, of the value to be attached to Lord Campbell as a legal biographer. It is an unpleasant task to measure out such treatment to a book, which, with its companion, the 'Lives of the Chancellors,' has afforded so much pleasure and amusement to

[1] *Many years afterwards Lord Cochrane's case being reconsidered, he was restored to his rank in the Navy, he was entrusted with an important naval command, and eulogies upon his services and upon his character were pronounced by Lord Brougham and other Peers.* (Note by Lord Campbell.)

myself, in common with all those readers whose ancestors do not happen to be misrepresented in its pages. 'Eminently readable' is the verdict passed upon them by Mr. MacDonell in the 'Dictionary of National Biography.' 'The style is lively, though rough, careless and incorrect; every incident is presented effectively: they are full of good stories, and they contain a great deal of information about the history of law and lawyers which is not to be easily found elsewhere.' 'But,' says the same writer, 'none the less are they among the most censurable publications in our literature. . . . Literary morality in its other form, the love of historical truth and accuracy he hardly understood. No one who has ever followed him to the sources of his information will trust him more, for not only was he too hurried and careless to sift such evidence as he gathered, but even plain statements of fact are perverted, and his authorities are constantly misquoted.' Another high authority, speaking of the 'Lives of the Chancellors,' says: 'As an historical production, the whole work is wanting in a due sense of the obligations imposed by such a task, is disfigured by unblushing plagiarisms, and, as the writer approaches his own times, by much unscrupulous misrepresentation.' The life of Lord Shaftesbury has been subjected to a minute dissection by Mr. Christie. Mr. G. T. Kenyon has had to re-write the life of his grandfather, the Lord Chief Justice. The late Lord St. Leonards published a pamphlet to clear himself from imputations made upon him in the life of Lord Brougham.[1] But the most recent and familiar example is to be found in the case of Lord Lyndhurst, whose family were fortunate in obtaining the services of Sir Theodore Martin to write an authentic life of the great Chancellor and orator. In the preface to that life occurs the following passage, which will furnish an apology, I hope, for the form and length of this chapter:—

Sub voce, Lord Campbell.

J. B. Mullinger, 'Introduction to Study of English History,' p. 229.

'Life of Lord Lyndhurst,' p. v.

Many of Lord Campbell's misrepresentations have crept into general circulation, and been reiterated by writers who had probably neither the means nor the inclination to institute

[1] 'Misrepresentations in Campbell's Lives of Lyndhurst and Brougham, corrected by St. Leonards.'

original inquiries. The impression thus produced could only be displaced by dealing with these misrepresentations in detail. The weight and authority of one who had himself been a Lord Chancellor, writing of his predecessors, could not be disregarded. It was indispensable, in justice to the memory of Lord Lyndhurst, to show that Lord Campbell's self-imposed task had not been discharged with the regard to accuracy and to impartiality which are the first duties of a biographer, but the neglect of which becomes wholly inexcusable in a man whom his vocation in life, and the long exercise of judicial functions, might have taught to sift his facts, to distrust his own prejudices, and above all to deal out justice and to maintain truth.

It must not be supposed, however, that Lord Campbell's 'Life of Lord Ellenborough' is written in a professedly hostile tone: scattered throughout its pages are many passages which stand out in a strong contrast to the picture of a partisan Judge striving to obtain a conviction at all hazards, which, thanks in a great measure to the extract above quoted, has passed into history.

At p. 154 of the same volume he says of Lord Ellenborough, 'Not only had he the incorruptibility now common to all English judges, but he was inspired by a strong passion for justice, and he could undergo any degree of labour in performing what he considered his duty.'

At p. 231, 'This character has been thus drawn by one who knew him well. I never knew any man except the Duke of Wellington who was so innately just. He thoroughly loved justice—strict justice, perhaps.'

At p. 232 he speaks of 'his unspotted integrity, his sound learning, his vigorous intellect, and his manly intrepidity in the discharge of his duty.'

How Lord Campbell was able to reconcile these well-deserved panegyrics with the conduct which he so vehemently stigmatises passes my comprehension. But it is time to examine sentence by sentence the pages which have had so great an influence in determining the popular estimate of Lord Cochrane's trial.

Lord Cochrane's case '*drew upon the Lord Chief Justice*

a considerable degree of public obloquy, and, causing very uneasy reflections in his own mind, was supposed to have hastened his end.'

That Lord Ellenborough incurred the hostility of the Westminster mob is undeniable,[1] as also the fact that he was bitterly assailed by Cobbett in his 'Political Register,' and by other newspapers now extinct, from which elegant extracts are given in the 'Autobiography of a Seaman.' What the House of Commons thought of his conduct was made sufficiently clear by the voting on the 30th of April, 1816. The London mob at this period was as impartial in its sympathies as it was chivalrous in its conduct, and within a few days of the trial had expressed its sympathy with the wife of the Regent by spitting in the face of his mother, old Queen Charlotte. As to the 'uneasy reflections' which 'were supposed to have hastened his end,' I have the authority of Lord Ellenborough's family that there is not a shadow of foundation for it, and it is a pure invention of Lord Campbell's.

supra, p. 258.

'Life and Times of Lord Brougham,' vol. ii. p. 215.

'*At popular meetings he* (Lord Cochrane) *was in the habit of delivering harangues of rather a seditious aspect, which induced Lord Ellenborough to believe that he seriously meant to abet rebellion, and that he was a dangerous character.*'

It would perhaps be rash to assert that Lord Cochrane was not in the habit of delivering rather seditious harangues at popular meetings in Palace Yard and elsewhere, previous to his trial and imprisonment; but they have certainly escaped my search, and they are not referred to in the 'Autobiography of a Seaman.' The authors of the continuation of that work refer with complacency to harangues at popular meetings delivered after his liberation, and Lord Cochrane is said by them to have expressed his regret for the line of conduct then adopted. We know that

'Life of the Tenth Earl of Dundonald,' vol. i. p. 84.

[1] His windows were broken more than once, and on one occasion, a younger son of the Lord Chief Justice, on returning from school, found the drawing-room carpet strewn with bricks and stones that had shattered the window panes.

his name was on the list of the so-called Committee of Public Safety found in the pocket of Watson after the Spa Field Riots in 1817, though there is no reason for supposing that he ever consented to it.[1] I think there can be little doubt that Lord Campbell is confusing the extra-parliamentary and possibly seditious attacks upon the Government *after* the trial with motions and speeches in favour of Naval Reform made by him in Parliament *before* it, which were no more seditious than the ordinary utterances of an M.P. in Opposition. It is part of the policy of representing the trial as a political one, in which Ministers were interested, and Lord Cochrane as a dangerous firebrand whom they desired to crush at all hazards.

'State Trials,' vol. xxxii. p. 283.

It cannot be too strongly insisted that the prosecution was *not a political one*, but instituted by the Stock Exchange, a body containing members of every shade of political opinion, and that the Government of the day had nothing to do with it. They not only refused to take up the prosecution, but the Attorney-General declined a retainer offered to him in his private capacity. Nor is there, as far as I know, the slightest foundation for saying that Lord Ellenborough, or indeed anybody else in 1814, regarded Lord Cochrane as a dangerous character, except to the foes of his country on the deck of a ship of war.

'*He had an uncle named Cochrane, a merchant and a very unprincipled man.*'

This statement is corrected in the 'Autobiography.' Lord Campbell, it is unnecessary to say, is confusing Cochrane Johnstone, a retired military officer, and the defendant in the trial, with another uncle, the Hon. Basil Cochrane, an East India merchant, who is described in this part of the 'Autobiography' as a highly honourable man, but who figures in a not very amiable light at an earlier place in the same volume.

Vol. ii. p. 321.

pp. 271–2.

[1] In summing up to the jury Lord Ellenborough said of this list, 'This, one should suppose, was an intended committee, or more probably names put down to hold out the appearance to others of a committee being to be appointed.'

'State Trials,' vol. xxxii. p. 615.

'*Everything succeeded to their* (his Uncle and De Berenger's) *wishes; the intelligence was believed, the funds rose, and they sold on time bargains many hundred thousand pounds of* 3 *per cents. before the truth was discovered.*'

From the *suggestio falsi* we come to *suppressio veri*. There is nothing in this passage to indicate that Lord Cochrane was one of those who had sold at a profit on the day of the false news: the pronoun *they* must refer to the uncle and to De Berenger, and as far as we know De Berenger never sold stock nor made a time bargain in his life. Lord Campbell is not even correct as to the nature of the intelligence, which he describes as being to the effect '*that a preliminary treaty of peace had actually been signed.*' Reference to the evidence shows that it was merely that 'an immediate peace is certain.' Of course the essential part of the news was the death of Buonaparte, and this Lord Campbell omits. The Press of the day shows that the negotiations at Chatillon were highly unpopular, and news of a peace on their basis would probably have depressed the funds.

'*It so happened that Lord Cochrane was then in London, was living in his uncle's house, and was much in his company.*'

Here the uncles have again got confused. It was with *Basil* Cochrane that Lord Cochrane had at one time resided, though, as we have seen, a few days previously to the day of the fraud he had taken a house of his own in Green Street. This discrepancy may seem a trivial matter, but when we remember the vital importance at the trial of De Berenger's visit to Lord Cochrane's own house, and the prolonged discussion as to what did or did not take place there, it is clear that to be capable of making this slip Lord Campbell must have entirely forgotten the incidents of the trial which he professes to describe.

'*When the fraud was detected—partly from a belief of his complicity, and partly from political spite, he was in-*

cluded in the indictment preferred for the conspiracy to defraud the Stock Exchange.'

As to the charge of political spite, I can only reassert that no evidence in support of it has ever been adduced, and Lord Campbell is only echoing Lord Cochrane's frenzied accusations against everyone concerned in the trial. Lord Campbell, however, may well have been at a loss for some explanation of his being included in the indictment if he was ignorant, as it appears he was, that Lord Cochrane had held 139,000*l.* Omnium on the day of the fraud, all of which was sold at a profit, and that it was to his house that De Berenger came red-handed from the perpetration of the fraud.

'*The noble and learned Judge, being himself persuaded of the guilt of all the defendants, used his best endeavours that they should all be convicted.*

'*He refused to adjourn the trial at the close of the prosecutor's case about* 9 *in the evening, when the trial had lasted* 12 *hours, and the jury as well as the defendants' Counsel were all completely exhausted, and they all prayed for an adjournment.*'

That Lord Ellenborough was persuaded of the guilt of the defendants is no doubt perfectly true, and it is difficult to see who could have helped being so on the evidence adduced in Court. No doubt he summed up strongly against them, but if Lord Campbell insinuates that he was guilty of partiality or oppression, that he excluded admissible, or included inadmissible, evidence, or conducted himself otherwise than with scrupulous fairness, the shorthand notes of the trial are in existence to contradict it.

Looking at the whole of Lord Ellenborough's conduct during the case, the charge of having refused an adjournment and forced the defendants' Counsel to speak when weary and exhausted, is undoubtedly the one, next perhaps to the refusal of the new trial, which has most strongly impressed not only the popular mind, but members of the legal profession; as it stands in these three or four lines it seems to need no investigation, and to carry

on the face of it the signs of the grossest oppression. We have seen what use Lord Cochrane himself made of it; how it first appeared unobtrusively in the tail of the affidavit of the 14th of June, how it figured in his defence in the House on the 5th of July, and how it formed the first of the Articles of Charge against Lord Ellenborough.[1] We have also seen the comments made on it in Parliament by Sir William Garrow and Sir Samuel Shepherd. The really strange thing is that, with the qualified exceptions which I am about to mention, it never received any confirmation at the time from the persons who are represented as having been so completely exhausted, and as having their prayer for adjournment refused.

In the first place, as to the jury. On referring to the shorthand note we find that the jury took no part at all in the discussion as to the adjournment. Yet they were a highly intelligent body of men, who, as we see from the report, were taking careful notes, and who every now and then interposed with questions exceedingly to the point. It is impossible to believe that a representation made by them that they were too fatigued to go on would not have met with respectful consideration from the Bench. Even had Lord Ellenborough been actuated by the sinister motives imputed to him, his experience as an advocate would have taught him the folly of setting the jury against him by refusing a reasonable request. In the affidavit of June the 14th, Lord Cochrane swore 'that he had been informed, and verily believed that the jury . . . . were so completely exhausted and worn out by extreme fatigue . . . . that justice could not be done to him.' Here the matter rests; no one of the twelve men ever came forward to confirm this statement on oath or otherwise. Affidavits were flying about for weeks afterwards, and we should have thought that it would not have been impossible to find at least one honest man amongst them to testify to his extreme fatigue. We know, at least Alderman Wood said so, that one of the jury had expressed his willingness

supra, p. 186.

supra, p. 215.

[1] It also appears in Lord Cochrane's letter to the electors of Westminster (August 10th, 1814).

'Autobiography,' vol. ii. p. 460.

to state publicly the effect produced on his mind by Lord Cochrane's statements after the verdict; it is strange that this communicative juryman did not mention his fatigue and that of his colleagues, if indeed they suffered from it. Be it as it may, the Alderman did not allude to the subject, and as far as the jury are concerned, this statement of Lord Campbell's goes absolutely unconfirmed.[1]

How does it stand as regards the Counsel? In a matter of such gravity the only safe plan is to refer to the shorthand report of the trial itself. It will be remembered that Serjeant Best led for Lord Cochrane, his uncle, and Butt; Mr. Park for De Berenger; and Serjeant Pell for Holloway, Lyte, and Sandom. Mr. Alley threw up the sponge for M'Rae and took no part in the discussion. The case for the prosecution closed apparently about 10 P.M., and Best immediately volunteered the statement that the defence were going to call witnesses without saying anything whatever about adjourning. Lord Ellenborough replied that he wished to 'hear your opening, and if possible to get into the defendants' case.' Best said no more, but Park gave as an objection the difficulty, which he said his lordship would feel equally with them, arising from fatigue owing to the length of their attendance in Court. They would proceed, however, if his lordship desired it. Lord Ellenborough repeated that he wished to get into the case so as to get through, if possible, the examination of several witnesses upon whom the public business of several offices depended. Park then shifted his ground. He had undergone very great fatigue, he said, which he was able to bear; but he submitted the hardship on parties charged with so serious an offence, of having their case heard at this late hour, and then a fresh day being given to Gurney for his reply. Lord Ellenborough answered that the sun would be almost up before they could adjourn, and it could not be said that

Trial, p. 254. *supra*, p. 123.

[1] I should like to refer the reader to the conversation which took place between Lord Ellenborough and the jury relative to an adjournment in the trial of Watson for high treason as an illustration both of the way in which jurymen are accustomed to interpose in such discussions, and of the method adopted by the Bench in trying to meet their convenience. 'State Trials,' vol. xxxii. p. 578.

it would be a fresh day. If they required it, he would sit through rather than that.

From this it is clear that Best never asked for an adjournment, and that Serjeant Pell took no part in the discussion at all. The application proceeded from Park alone, and in confirmation of this, a contemporary report,[1] as well as the 'Times' newspaper, asserts that an application for an adjournment was made by *De Berenger's* Counsel. Yet, in the face of this, Lord Campbell says that 'all (Counsel and jury) prayed for an adjournment.' We can well understand why Park should have been more anxious for time to consider his position than the other leaders. Pell called no witnesses; Best had practically committed himself to his line of defence; but to Park it must have been of the utmost consequence to make a final effort to dissuade his client from launching his desperate *alibi* in the face of the unshaken testimony as to the identity of De Berenger with Du Bourg. As a matter of fact, however, he suffered no loss on this score. Best's speech occupied nearly two hours; De Berenger was in Court, close to his Counsel,[2] and there was ample opportunity for the consultation which resulted in Park reluctantly opening his *alibi* to the jury.

See Appendix, p. 499.

How far, again, is Lord Campbell's statement confirmed by the Counsel engaged in the case? No less than ten appeared for the various defendants, and of these only two, so far as I can discover, have ever alluded to the matter. Lord Brougham, as we shall see shortly, *did* complain of the prolonged sitting, not on account of fatigue, but because it resulted in the evidence for the defence being thereby separated from the speeches. We have seen how this argument was dealt with in the House of Commons.

supra, p. 249.

[1] 'The Trial of Lord Cochrane and Others for Conspiracy,' printed for Coxhead, No. 53 Holywell Street, and Hughes, Ludgate Hill. At p. 32 we read: 'Mr. Park, on behalf of the defendant Berenger, suggested the propriety of adjourning the trial, not on account of the fatigue that the Counsel had endured, but for the ends of justice, in order that the case of the defendants might be fairly heard.'

[2] In the debate of July 19th, 1814, Garrow describes De Berenger as 'sitting in an unsuspected part of the Court, looking down and writing, as if he were a clerk to one of the solicitors.'

Hansard, vol. xxviii. p. 787.

Scarlett is said to have remarked at a dinner-table, many years after the trial, that Lord Cochrane's innocence might have been established had not the Judge arbitrarily hurried on the defence at a late hour in the evening, when all parties were wearied. I have some comments on this in the following chapter, and will merely say here that he had ample opportunity during the months immediately succeeding the trial of making this statement, and that he did not avail himself of it.[1] *infra*, p. 364.

The silence of Counsel on this point is the more remarkable that some of them had seats in the House of Commons, and could hardly have refrained from confirming Lord Cochrane on this point, had it been well grounded; while professional etiquette may well have prevented them from contradicting him. We know that they furnished Mr. Abercrombie with a statement as to matters connected with the trial on the occasion of Lord Ebrington's motion, but there is nothing about the adjournment in it. Equally remarkable is their silence when it was debated again on the motion for impeachment. Lastly, is it likely that such men as Best and Scarlett and Brougham would have acquiesced calmly in the continuance of the sitting if they had felt that it was fraught with serious injury to their client? Best had got to do what he could with a bad case, and he may well have thought that a late hour in the evening was no unfavourable time for doing it. I have dealt elsewhere with the difficulties that confronted him, and have suggested what I believe to be the explanation of his tactics. *supra*, p. 212. *supra*, p. 184 *et seq.*

There are, however, one or two other points to consider. Was this an unusually prolonged sitting, and, if so, had Lord Ellenborough valid reasons for acting as he did? With regard to the first of these we may admit that to those whose ideas of judicial procedure are derived

[1] It is true that in his letter to the electors of Westminster of the 10th of August, Lord Cochrane says that Best 'intimated at the time, and afterwards authorised me to assert, that he was not able to do justice to the cause,' but without Best's exact words this goes for little, when compared with his silence on the subject in the House of Commons, of which he was a member during the years 1814–16. 'Autobiography,' vol. ii. p. 445.

solely from the Royal Courts of Justice in the Strand, which sit at 10.30 and rise at 4, with an interval of half an hour for refreshment in the middle of the day, this eighteen-hour sitting (from 9 A.M. on Wednesday to 3 A.M. on Thursday) must seem appalling. On circuit, however, when an uncertain amount of work has to be accomplished in a fixed amount of time, very prolonged sittings are by no means a rarity even now. There are few Common Law barristers of the older generation who cannot tell of occasions when they heard the chimes at midnight within the walls of an Assize Court. A friend of mine on the Oxford Circuit only the other day was mentioning a sitting of the Stafford Quarter Sessions to hear a rating appeal, which lasted from 9 A.M. to 12 P.M. without an adjournment of any sort. I myself have heard Sir Henry Hawkins at Worcester Assizes sentence three men to death between 12 and 1 in the morning;[1] and the 'Times' of Monday, the 10th of December, 1888, records the late Sir James Stephen as returning from Exeter Assize Court at 2 A.M. These, it may be said, are fortunately exceptional cases; but in the early years of the century twelve-hour sittings in criminal trials were the rule. The Old Bailey sat from 9 A.M. till 9 P.M. until the establishment of the Central Criminal Court in 1834, and from the pages of 'Howell's State Trials' instances of desperately long sittings could be multiplied indefinitely.

'State Trials,' vol. xxi. p. 486.

vol. xx. p. 891.

Lord Mansfield, for instance, in trying Lord George Gordon, sat till a quarter-past 5 A.M. There is a Scotch case, Rex *v.* Sir Archibald Kinloch, in which the jury returned their verdict at 8 A.M.; and in the famous trial of Burke at Edinburgh in 1828 for the Westport murders, the Court sat for twenty-three hours, sentence being pronounced at half-past 9 on the morning of Christmas Day. The trial of Colonel Despard for high treason lasted till 3.30 A.M.,[2] and that of his associates from 9 A.M. on Tuesday,

vol. xxviii. p. 524.

[1] Reg. *v.* Boswell and others; the *Times*, February 20, 1890. The Judge asked the jury if they would rather he postponed his summing-up till the morning, but they preferred to go on.

[2] It may be noted that Despard's Counsel were Best and Gurney.

the 8th of January, till well-nigh 8 o'clock the next morning, while such cases as those of Hardy, in which the Court sat on eight successive days,[1] from 8 or 9 A.M. to 12 and 1 at night, must have imposed an even severer strain on Judge, jury, and Counsel. This last case finally decided that in a treason case the jury might retire, but not separate, which was looked upon as a great concession. Indeed, at this period, and for long after, adjournments in criminal cases were looked upon with suspicion. Ponsonby gave vent to this feeling in his speech on the motion to impeach Lord Ellenborough. Mr. Justice Park, the same Park who defended De Berenger, only permitted with reluctance the trial of Thurtell for the murder of Weare to be adjourned at a late hour[2]; and in 1819 Scarlett moved unsuccessfully for a new trial in a case of conspiracy on the ground that the jury had been allowed to separate without the consent of the defendants.

'State Trials,' vol. xxiv. p. 199, *et seq.*

idem, pp. 414-18.

supra, p. 248.

Rex *v.* Kinnear and others, 2 Barnewall and Alderson, p. 462.

A word, too, must be said as to the excessive fatigue of the Counsel. We have seen with what scorn Garrow rejected the idea that a man was unfit to discharge his duty to his client after fifteen hours in Court,[3] and it should be remembered, moreover, that Best, Cochrane's Counsel, began his speech at 10.30, and had finished soon after midnight. The Counsel of those days were iron men, accustomed to carry on their daily avocations under circumstances of hardship and discomfort at which their modern successors would stand aghast. Long sittings, foul air, crowded Courts, were incidents of their everyday life; evening sittings were part of the routine not only of

supra, p. 252.

[1] October 28th to November 5th, 1794, excepting November 2nd, which was a Sunday.

[2] He is reported as saying that a case ought to go on until it was closed and that 'he could not order the Court to be adjourned unless the jury desired it. He was for himself perfectly willing to go on to finish the case before they separated. He had no personal wish on the subject. He had been accustomed to bear fatigue of this kind, and he was willing to bear it. Finally, after a fifteen hours' sitting, he acceded to the wish of the prisoners for an adjournment on the express ground that the jury concurred in it.

[3] In the Scotch case of Burke and Hare just referred to, Henry Cockburn made his justly celebrated speech on behalf of McDougal, the paramour and accomplice of Burke, which resulted in her acquittal, after 17 hours' continuous and strenuous labour in Court.

the Old Bailey but of the Rolls Court. How the business was transacted on circuit within living memory there are many still amongst us who can narrate from personal experience. An old-fashioned upper room, converted into two Courts by the intervention of a curtain or a wooden partition drawn across the middle, the Crown Court at one end, the Nisi Prius Court at the other; a babble of voices, a dim and flickering light, Counsel, attorneys, jurors in waiting, witnesses, spectators, all crowded into the narrowest limits. These were the surroundings that hedged in the majesty of the law in our county towns.[1] No adjournment for refreshment, scant opportunity for leaving the Court for the most necessary purposes; leading Counsel busily engaged in both Courts at once, having been at consultation at eight, and with many hours of work before them on the rising of the Court. Were men nurtured in this school likely to be incapacitated by even such a sitting as Lord Cochrane complains of? And amongst them was Brougham, of whom Lord Campbell writes with regard to the Yorkshire election in 1830: 'No man ever went through such fatigue of body and mind as he did for the three following weeks.'

'Lives of the Chancellors,' vol. viii. p. 365.

But even if we grant that it was an unusual course to sit so late—and the technical objections to an adjournment in cases of felony do not apply to misdemeanours—we have still to consider whether Lord Ellenborough may not have had valid reasons for acting as he did. Many such reasons suggest themselves at once.

He may have thought it undesirable to expose the jury to the ordeal of making their way through the possibly hostile crowd that thronged the approaches to the Court, and which would have dispersed by the small hours of the morning. He may have felt that if the jury were to be kept up late either night it was better that it should come in the middle of the proceedings than when he was summing up or when they had retired to consider their verdict; and we can imagine the outcry that would have been

[1] It was the defective state of Guildford Assize Court which was the cause of a once famous scene between Mr. Justice Blackburn and the High Sheriff of Surrey in 1860.

raised had his fiercely criticised charge been delivered towards midnight instead of in the afternoon, which it must have been had the speeches of Counsel been thrown over to the Thursday morning. But none of these suppositions are necessary. Lord Ellenborough himself gave his reasons:—

> There are several gentlemen attending as witnesses (he said) who, I find, cannot, without the greatest public inconvenience, attend to-morrow. . . . There are several witnesses upon whom the public business of certain offices depend.

supra, p. 128.

We know who those witnesses were—Lord Melville, the First Lord of the Admiralty; Colonel Torrens, the Secretary to the Commander-in-Chief; and Mr. Goulburn, the Under-Secretary of State for the Colonial Department. They had attended in Court on the Wednesday on subpœna, having doubtless arranged their official business before starting, but they could not have foreseen the possibility of spending Thursday there also, or have made provision for the events of another twenty-four hours. Anyone with the slightest knowledge of the working of Government Departments will realise what disorganisation would be wrought by the unexpected absence of such men from their offices for a single day, even at a period of peace and slackness. But the early days of that June were no ordinary times.

We were at peace with France, it is true, but the war with America was raging, and hostilities there were about to enter on a new and critical phase. The cessation of the war with France had left a large number of line-of-battle ships and other vessels in the Mediterranean and on other stations where they were no longer needed, and only formed a useless expense to an overburdened nation. Many of these had to be paid off, and the crews of others to be transferred to the ships which were being despatched to the coast of North America. Not only was part of our fleet being transformed from a war to a peace footing, but the remainder was being shifted to a new base to assist the military operations against the United States and to protect

our commerce from their swarming privateers. Troops had to be brought home from the South of France and carried across the Atlantic, and British vessels were even being employed in transporting the Russian guards to their native country. It was no mere routine duty that rendered imperative the presence of Lord Melville at his office.

These remarks will apply *mutatis mutandis* to Colonel Torrens and Mr. Goulburn. Many of the duties of our modern Secretary of War were then discharged by the Secretary for the Colonies, and he was not only burdened with the multifarious transactions arising from the return of our soldiers at the conclusion of the Peninsular War, but he had on his hands the details of the less glorious strife in America, where, for the moment, we seemed to have lost the control of the Canadian lakes, and where the expedition to Washington was on the point of being launched. Any moment might bring important despatches from the seat of the war which would brook no delay.

It would be waste of time to enlarge upon the duties of Colonel Torrens, as Military Secretary to the Commander-in-Chief, at such a period, especially when his superior, the Duke of York, was fully engaged in paying the attention due from a Prince of the Blood to our Royal guests, the Allied Sovereigns, who had just landed in England, and in connection with whose visit a military review had been ordered in Hyde Park for the 20th of June.

Taking these matters into consideration, it can hardly be said with truth that Lord Ellenborough 'assigned insufficient and artificial reasons'; and though it is true that the length of Counsel's speeches prevented him from proceeding with the examination of the official witnesses previous to the adjournment, as he had desired, they were still taken at an early hour the next morning, which they could not have been had the speeches come at the opening of the Court, and they were consequently released from attendance in time to spend the best part of Thursday at their offices. It is not too much to conjecture that urgent representations on the part of these witnesses to take their evidence and

vide *supra*, p. 149.

dismiss them that night must have reached the Bench, and that such representations were based on grounds of the public service.

Still, it may be said that no consideration of convenience to the public ought to have weighed with the Judge in comparison with the possibility of inflicting injustice on the accused; and I think, though I have never seen it suggested before, that there was passing through Lord Ellenborough's mind an idea which rendered it imperative, in the interests not only of justice but of the nation at large, that the prisoners' line of defence should be disclosed before the Court rose.

In the days immediately following the perpetration of the fraud, rumour had been busy with the name of Lord Yarmouth;[1] and we have seen, moreover, how his name had been introduced into the story by Lord Cochrane's affidavit of the 11th of March, which represented De Berenger as borrowing a coat and hat in order to visit him amongst others upon the day of the fraud. Lord Yarmouth had been subpœnaed for the defence, and was seated on the Bench, but no one in the Court, except the prisoners' Counsel and attorneys, could have any notion of the nature of the evidence which he would be called upon to give. We know now that he was only examined to confirm the statement of previous applications having been made on the part of De Berenger to obtain employment on board the *Tonnant*, and that he was asked questions as to the handwriting of the latter, and as to the uniform of his corps of sharp-shooters. But, for all that Lord Ellenborough knew, the defence might be going to call him to prove that De Berenger had actually visited him on that eventful morning in the disguise supplied by Lord Cochrane, and to question him as to what had taken place. Even if direct criminality was not imputed, the mere insinuation could not fail to draw him into the circle

[1] Brougham to Earl Grey. 'Of the Cochrane business I know nothing, except that I have received general retainers for the respective parties within the last three or four days, apparently in the contemplation of some proceedings in a high tone. Who is implicated I can't say, except as I see in the newspapers. Yarmouth and Lowther were at first much talked of.' March 12, 1814. 'Life and Times of Lord Brougham,' vol. ii. p. 197.

of those to whom guilty knowledge was attributed. If it could be shown that the pretended messenger had come to Lord Yarmouth from Lord Cochrane's house, there would be a strong suggestion that the one knew as much of the fraud as the other.

Lord Yarmouth, afterwards sixth Marquess of Hertford, had played a prominent part both in society and in political life. A friend of the Prince Regent's, he shared his unpopularity. John Wilson Croker, the Parliamentary Secretary to the Admiralty, who was reported to bear no good will to Lord Cochrane, was his intimate friend. All these facts combined rendered it far from improbable that a defence, some of the agents of which were none too scrupulous, might seek to shift part of the responsibility of the fraud, or at any rate a share in the guilty knowledge of it, on to the shoulders of their witness. And there were circumstances which made such a prospect extremely material to the public weal. The Allied Sovereigns were enjoying the hospitality of the English nation, and Lord Yarmouth had been appointed to the especial charge of the Czar of Russia during his visit. Our guests were to ride through the City on the Thursday morning; it would be Lord Yarmouth's duty to accompany the Czar, a duty which we know from the Press of the day he actually fulfilled before going into Court. What would be the feeling of a proud, sensitive, and chivalrous monarch like the Emperor Alexander when he learned that the nobleman attached to his suite by the special action of his princely host was at that moment being charged in a criminal Court with complicity in a despicable fraud, a fraud based, moreover, on the alleged action of his own troops in France? These ceremonies were no mere pageants, no mere matter of parades and processions. The map of Europe, rolled up by Pitt after Austerlitz, was once more on the diplomatic table for reconstruction; not a Sovereign in Europe could at that moment have traced the boundaries of his own dominions. It was of the utmost importance that this meeting of the conquerors should pass off without any *contretemps*, and above all that the fiery nature of the Czar should not be

'Times,' June 10th.

roused to enmity by what he could consider as little short of an insult. Surely Lord Ellenborough was justified in refusing to adjourn the Court, until he knew from the lips of Counsel that no effort was to be made to draw Lord Yarmouth into the meshes of the conspiracy.

Before quitting this point, it may be allowed that the defendants suffered one hardship, but one for which the Judge could in no way be held responsible. I refer to the fact that Counsel for the defence was only allowed one speech, and that before his witnesses were called. It was, however, the law of the land, and remained so until the passing of 28 & 29 Vict. c. 18, s. 2. Lord Ellenborough could no more remedy it than he could alter the law which then, as now, prevented the defendants from going into the box as witnesses.

'*The following day, in summing up, prompted no doubt by the conclusion of his own mind, he laid special emphasis on every circumstance which might raise a suspicion against Lord Cochrane, and elaborately explained away whatever at first sight appeared favourable to the gallant officer. In consequence the jury found a verdict of Guilty.*'

This very serious charge of misdirection can only be founded on Lord Campbell's recollections, as he obviously had not re-read the evidence before writing the account of the trial, if indeed he had ever read it at all. It forms the gist of Lord Cochrane's complaints in his Article of Charge, his letter to Lord Ellenborough, and the 'Review of the Case of Lord Cochrane'; and as these accusations are repeated in the 'Autobiography of a Seaman,' it will be more convenient to deal with the question of the summing-up, so far as it has not yet been dealt with, in the following chapter.

'*Next term Lord Cochrane presented himself in Court to move for a new trial, but the other defendants convicted along with him did not attend. He said truly that he had no power or influence to obtain their attendance, and urged that his application was founded on circumstances peculiar to his own case. But Lord Ellenborough would not hear him because the other defendants were not present.* Such a rule had been before

laid down, but it is palpably contrary to the first principles of justice, and it ought immediately to have been reversed.'

The portion of this paragraph in italics fairly represents what took place in the Court of King's Bench on the 14th of June, except that it leaves the false impression that it was only the Chief Justice and not the whole Court which refused the application.[1] The remainder of it requires both explanation and comment.

Trial, pp. 532–4. *supra*, p. 178.

When one of the common cries of the day is the necessity for a Court of Criminal Appeal, it may come as a novelty to the non-legal readers that new trials may be obtained in criminal cases at all, but the following passage from Sir James Stephen's 'History of the Criminal Law' will put the matter on its proper footing:—

Vol i. p. 310.

'Besides writs of error, motions for new trials are permitted in some cases of misdemeanour, namely, cases of misdemeanour tried before the Queen's Bench Division in the exercise of its original jurisdiction, or sent down by that division to be tried at the Assizes on the Nisi Prius side.' (The misdemeanour in question falls, of course, under the former head.) 'When the case is so tried a new trial may be moved for on the ground of misdirection, that the verdict was against the evidence, or on other grounds on which new trials are moved for in civil cases.'[2]

Rex v. Askew and others, 3 Maule and Selwyn, Revised Reports, vol. xv. p. 380.

Now, on the morning of Tuesday, June the 14th, 1814, we read in the colourless narrative of the law reporters, George Maule and William Selwyn, Esquires, of Lincoln's Inn, barristers-at-law, that Nolan moved for a new trial on the behalf of John and Louisa Askew, who had been convicted, together with one Margaret Hipwood, of an indictment charging them with a conspiracy to indict the prosecutor for felony. He stated that Margaret Hipwood was not then present, that search had been made after her, but she was

[1] If it were necessary to show the interposition of the puisne judges on this occasion, evidence would be afforded by the remarks of Mr. Justice Dampier: 'By the rules of Court it cannot be: your lordship has been informed of the practice of the Court, and from that practice the Court has no power to depart.'

Vol. i. p. 653, *et seq.* (2nd ed. 1826).

[2] A fuller statement of the law will be found in Chitty's Criminal Law, the second edition of which was published within twelve years of Lord Cochrane's trial.

not to be found, having left her residence before the trial, at which time she was at large upon her own recognisances. Lord Ellenborough, C.J., interposed and referred to Rex *v.* Teal, where the Court determined that the presence of all the defendants for a conspiracy was necessary in order to move for a new trial, and he observed that the reason clearly was to prevent the most guilty from keeping out of the way and putting forward the least guilty in order to try the result of a motion for a new trial. Le Blanc, J., added that when the Report came before the Court in a future stage of this proceeding, if upon the reading of the Report the Court saw any reason to think that justice had not been attained, it was open to them at that time, either by directing a new trial or in any other way, to see that justice should be done. So Nolan took nothing by his motion.

(1809) 11 East, 307.

It was at the close of this very day that Lord Cochrane appeared with his motion for a new trial, and had it refused him by the Court on the ground that they must abide by the rules they had laid down, without distinction of persons. So we find that the rule had not only been laid down some years at least before, but had been acted on that very morning. Nor can I agree that it is palpably contrary to the first principles of justice. The reasoning of Lord Ellenborough in both Rex *v.* Teal and Rex *v.* Askew seems very pertinent. The Court, as Sir Simon Le Blanc said, *have still the power of ordering a rehearing if they see that justice has not been done*, but they cannot do it in the same form. A writer in the 'Law Magazine and Review,' to whom I have frequently had occasion to refer, says :—

Practically in Teal's case, as in Lord Cochrane's, no hardship was suffered through the rule, for the Court in the former case heard the arguments of Counsel on the reading of the Report, and would have then granted a new trial had justice required; and in Lord Cochrane's case the like opportunity was offered him to impugn the verdict, and he accepted it and failed.

Vol. x. p. 229.

Lord Campbell says that such a rule ought to have been

immediately reversed. In November 1851, when sitting in banco with Justices Patteson and Erle, the opportunity of so doing had been afforded him, some years before writing Lord Ellenborough's life, in the case of the Queen *v.* Caudwell, but he had refused to avail himself of it. This case differed in that there was only one defendant, but Lord Cochrane's case was cited and not disapproved of, except that Lord Campbell said, '*I have thought it a hardship* that one of several defendants could not move unless all were before the Court.'

17 Q. B. p. 503.

'*Lord Cochrane was thus deprived of all opportunity of showing that the verdict against him was wrong.*'

How absolutely false this is has been sufficiently demonstrated both by the preceding paragraph and by the account of what took place in the King's Bench on the 20th of June.

Trial, p. 585

supra, p. 179.

'*Although as yet he was generally believed to be guilty, the award of this degrading and infamous punishment (the pillory) upon a young nobleman, a member of the House of Commons, and a distinguished naval officer, raised universal sympathy in his favour.*'

With regard to the pillory and to the sentence passed on the whole body of the defendants, critics seem to put aside what is generally accepted as the cardinal principle to be adopted in passing sentence on criminals, namely, that the punishment should be adequate to the crime, and that it should be inflicted without distinction of persons. To urge that a man should be exempt from a form of punishment prescribed by the Legislature for the offence of which he has been found guilty, because he is a 'young[1] nobleman,' or a 'member of the House of Commons,' or 'a distinguished naval officer,' or all three, is an argument that is absolutely fatal to judicial impartiality, and comes with peculiar inappropriateness from the pen of one who at the moment of writing held the high office of Chief Justice of

[1] Lord Cochrane was then in his 39th year, within a few months of Nelson's age at the battle of the Nile.

the Queen's Bench. The pillory was a relic of a barbarous age, when cruelty was of the essence of punishment, when crime was rife, and constables were few; and it was most deservedly swept from the Statute Book in the first year of the present reign. In 1814 it was part of the law of the land, and though in 1816 it was abolished in all cases but one, it remained as a punishment for perjury and subornation of perjury up to 1837. The sentence was imposed, not in hot haste, as is asserted in the 'Autobiography of a Seaman,' but after long deliberation, and not by Lord Ellenborough alone,[1] as is so often assumed, but by a Court of four Judges, one of whom, as we have seen, afterwards declared that it was the weighed and mature decision of each and all of them.

56 Geo. III. c. 138. 7 Will. IV. & 1 Vict. c. 23.

Vol. ii. p. 354.

supra, p. 282.

The condemnation of its infliction in this instance has proceeded for the most part from people who were and are firm believers in Lord Cochrane's innocence; the Judges who sentenced him were equally convinced of his guilt. Lord Cochrane himself declared that, if guilty, the punishment was none too great for his offence. There is no doubt, in my mind, that the *pillory* was not inflicted for the fraud itself, but for the perjury and subornation of perjury involved in the defence. The jury by their verdict showed that they disbelieved the affidavit of Lord Cochrane, and the *alibi* men of De Berenger. The pillory was the punishment peculiarly appropriated to perjury, and was retained for that crime for twenty years after it was

Letter to Lord Ebrington, in Hansard, vol. xxviii. p. 764, *supra*, p. 207.

[1] That Lord Ellenborough was not in the habit of inflicting the pillory lightly or on his own responsibility appears sufficiently from a speech of his made in the House of Lords on the 5th of July, 1815, when he said:— 'That he himself had never inflicted the punishment, when alone on circuit, except in one instance, where he had ordered two persons to be put in the pillory for having taken a bribe for assisting in the escape of French prisoners; an offence which the Legislature soon after made felony punishable by transportation.' 'In the course of the same debate Lord Eldon said there were offences with respect to which it would be unwise to abolish the punishment of the pillory, for instance, cases of perjury and fraud, or cheating, and especially in cases of mixed fraud and perjury. Cases might arise where persons might attempt to defend themselves against a conviction for fraud of which they had been guilty, by perjury or subornation of perjury.' There is no reference to any particular case, but the application is sufficiently obvious.

Hansard, vol. xxxi. p. 1125.

p. 1126.

abolished for all others. The North Fleet delinquents, Lyte, Sandom, and Holloway, attempted no defence of this character, and their punishment was limited to fine and imprisonment.

As to Lord Campbell's statement that Lord Ellenborough was looked upon coldly in Society and in the House of Lords, there is not the faintest shadow of justification. It was easy to make such statements after an interval of forty years. Equally false is it that '*he now had some misgivings himself as to the propriety of his conduct, and became very wretched.*' Neither the notes in Edward Law's handwriting nor his speech as actually delivered in the House of Commons breathed 'misgiving' or 'wretchedness,' and it is difficult to suppose that that speech was prepared without consultation with the Lord Chief Justice; the testimony of Lord Ellenborough's family, and especially that of one of the younger sons, the late Henry Spencer Law, is, to my mind, conclusive of the fact that their father never experienced the smallest misgiving either as to the justice of the verdict, or as to his own conduct in connection with the trial and sentence. The man who had bearded Fox and Burke and Sheridan was not very likely to be disturbed by the clamour of Westminster demagogues.

supra, p. 247.

Nor is there any foundation for the allegation that Lord Cochrane's re-election for Westminster and the remission of the pillory part of his sentence preyed deeply on his mind and affected his health. No one probably rejoiced more than Lord Ellenborough when the Crown exercised its prerogative of mercy, no one was more deeply imbued with the principle that it is for the Judge to impose the sentence prescribed by law without fear or favour, and to leave its remission or reconsideration to those in whose hands our Constitution places the power of pardon. That this was Lord Ellenborough's view may be gathered from the notes of Edward Law's speech.

Inaccurate to the end, Lord Campbell states in a note that many years afterwards Lord Cochrane's case was reconsidered. That he was pardoned we know; of the reconsideration, if any, I have been unable to discover the

traces. The preceding chapter has shown the steps by which Lord Cochrane was gradually restored to rank and honours. They show no sign of anything approaching a reconsideration of the case; it is not even certain from them that the law officers were consulted. The last chapter of this volume will show that the evidence before the Select Committee of 1877, which is often said to have conclusively established Lord Cochrane's innocence, did not even touch upon the trial.

Before closing this chapter, I should like to contrast with the picture drawn by Lord Campbell the account given by Lord Brougham of Lord Ellenborough's conduct in this case. Brougham was not only one of Lord Cochrane's Counsel, but a Whig, if not a Radical; he had many a professional encounter with the Lord Chief Justice both before and after the trial, and he was reputed to stand low in his favour. In the following words he sums up his character :—

His own nature had nothing harsh in it except his irascible temper, quickly aroused as quickly appeased; his mind was just, abhorring any deviation from equity; his nature was noble, holding in utter contempt everything low or base; his spirit was open, manly, honest, and ever moved with disgust at anything false or tricky; his courage was high, leaving him more scorn than compassion for nerves less firm than his own. 'Statesmen of George III.' vol. iii. p. 200 (1848).

And this is his description and comment on the trial :—

On the Bench it is not to be denied that Lord Ellenborough occasionally suffered the strength of his political feelings to break forth and to influence the tone and temper of his observations. That he ever, upon any one occasion, knowingly deviated one hair's breadth *from justice* in the discharge of his office is wholly untrue. The case which gave rise to the greatest comment, and even led to a senseless show of impeachment, was Lord Cochrane's. *But I have the best reason to know that all who assisted at this trial were in truth convinced of the purity with which the judicial duties were discharged, and the equality with which justice was administered. Lord Ellenborough was not one of those who, in directing the jury, merely read over their notes and let them guess at the opinions they have formed, leaving them* p. 220.

without any help or recommendation to form their own judgments. Upon each case that came before him he had an opinion, and, while he left the decision with the jury, he intimated how he thought himself. This manner of performing the office of judge is now generally followed and most commonly approved. It was the course taken by this great Judge in trying Lord Cochrane and his alleged associates; but, if any of those who attacked him for it had been present at the trial of the case which stood immediately before it or after it in the paper, he would have found Lord Ellenborough trying that case in the self-same way—it being an action upon a bill of exchange or for goods sold and delivered. I must, however, be here distinctly understood to deny the accuracy of the opinion which Lord Ellenborough appears to have formed in this case, and deeply to lament the verdict of guilty which the jury returned after three hours' consultation and hesitation.

If Lord Cochrane was at all aware of his uncle Mr. Cochrane Johnstone's proceedings it was the whole extent of his privity to the fact. Having been one of the Counsel engaged in the cause, I can speak with some confidence respecting it, and I take upon me to assert that Lord Cochrane's conviction was mainly owing to the extreme repugnance which he felt to giving up his uncle, or taking those precautions for his own safety which would have operated against that near relation. Even when he, the real criminal, had confessed his guilt by taking to flight, and the other defendants were brought up for judgment, we, the Counsel, could not persuade Lord Cochrane to shake himself loose from the contamination by giving him up. *As regarded the Lord Chief Justice's conduct at the trial, none of us had entertained any doubt that he had acted impartially, according to his conscience, and had tried it as he would have tried any other case in which neither political nor any other feelings could have interfered.*

Our only complaint against Lord Ellenborough was his Lordship's refusal to adjourn after the prosecutor's case closed, and his requiring us to enter upon our defence at so late an hour—past nine o'clock—that the adjournment took place at midnight, and before we called our witnesses. Of course, I speak of the trial at Guildhall only. Lord Ellenborough was equally to blame with his brethren in the Court of King's Bench for that most cruel and unjustifiable sentence which at once secured Lord Cochrane's re-election for Westminster when the House of Commons expelled him upon his conviction, and abolished for

ever the punishment of the pillory in all but one excepted case, perjury, in which also it has practically ceased to defile and disgrace our criminal jurisprudence.

In 1833, the Government of which I was a member restored this great warrior to his rank of Admiral in our Navy. The country, therefore, in the event of hostilities would now have the inestimable benefit of his services, whom none perhaps ever equalled in heroic courage, and whose fertility of resources, military as well as naval, place him high amongst the very first of commanders.[1]

Part of this passage is quoted in the 'Autobiography of a Seaman,' but the not unimportant sentences which I print in italics are omitted. Taken without them, the extract is an eloquent testimony to Lord Cochrane's innocence;[2] with their addition it affords an equally powerful proof of Lord Ellenborough's integrity, and is a striking contrast to those chapters of the 'Autobiography of a Seaman' which we are now about to examine.

[1] Seventeen years later, in a letter published in the 'Times' of November 21st, 1860, Lord Brougham, after reiterating in even stronger terms his testimony to the absolute impartiality of the Lord Chief Justice, goes on to add:—

'The only complaint which we considered we had a right to make, *and which we loudly made*, was his forcing us to go on with our case instead of adjourning at nine or ten o'clock.'

Lord Brougham was then a very old man, and even if Lord Cochrane's Counsel did consider that they had grounds of complaint—a fact which I have given my reasons for doubting—the shorthand report is absolutely conclusive that they did not make it in tones sufficiently loud to reach the ears of the reporter.

[2] At the same time the phrase of Brougham's, 'If Lord Cochrane was at all aware of his uncle Mr. Cochrane Johnstone's proceedings, it was the whole extent of his privity to the fact,' has a rather ambiguous ring, and the extracts from his correspondence with Lord Grey, letters written when the events of the trial were fresh in his mind, are hardly those of a man who feels that his client has been the victim of a miscarriage of justice. July 12th and 21st, 1814, pp. 206, 212, *supra*.

CHAPTER XIII

'THE AUTOBIOGRAPHY OF A SEAMAN'

LORD CAMPBELL'S glaring misrepresentations are damaging enough of themselves, occurring, as they do, in a work which, with its companion, 'Lives of the Chancellors,' is to be found in every well-equipped library. But their prejudicial effect has been multiplied a thousandfold by their reproduction in a book, equally popular, and circulating among a class of readers to whom lives of legal celebrities, however fascinatingly written, have no interest. It is with this book, the 'Autobiography of a Seaman,' that I have now to deal.

It is no exaggeration to say that Lord Cochrane, or, as he was for the last thirty years of his life, Lord Dundonald, is known to the present generation almost exclusively from its pages, and if they were concerned merely with his exploits by land and sea, I should be loth indeed to pen a line which could impeach their credit, but, unhappily, the same volumes which have helped to build up the reputation of a great seaman have placed a corresponding load of undeserved obloquy on the memory of a great Judge. The three chapters devoted in them to Lord Cochrane's trial are nothing but a tangled skein of statements in which truth and falsehood are dexterously blended; and the assertion of his own innocence is so closely connected with violent denunciations of Lord Ellenborough, that it is impossible to vindicate the conduct of the latter without bringing the facts relative to the Stock Exchange fraud into a light which is scarcely favourable to Lord Cochrane.

'Autobiography,' vol. ii. chapters 38-40.

The two volumes to which alone the title of 'Autobiography of a Seaman' is applicable were published at

the close of the very long life of the tenth Earl of Dundonald, the first volume in December, 1859, and the second in September, 1860, within a few weeks of his death. The story contained in them stopped short with the liberation of Lord Cochrane from the King's Bench Prison in 1815, and it was not until the lapse of some years that his son, the eleventh Earl, with the assistance of Mr. Fox Bourne, brought out two additional volumes completing the life, and the whole work has now been condensed into a single volume by the present peer, Lord Cochrane's grandson. No naval biography is more entertaining. Yet this popular book has been compiled in so extraordinary a manner as to have little claim to be considered anything more than a historical romance.

With regard to the naval portion of the book, I shall merely remark that the peculiar arrangement for the remuneration of the real author, which I shall have to refer to on another page, was such as would naturally tempt him to exaggerate Lord Cochrane's exploits. It is not in my province to analyse that part of the work. I shall only deal with the three chapters containing the distorted version of the trial, and of the proceedings connected therewith, nor will this be the first occasion on which they have been subjected to criticism. A writer in the 'Quarterly Review,' a keen admirer of Lord Cochrane, and a believer in his innocence, has shown how misleading is the narrative when this topic is reached, and how utterly devoid of foundation is the abuse bestowed upon Lord Ellenborough. But an article in another publication of about the same date contains matter of a far more damaging character.

Vol. cix. p. 394, April 1861.

The tenth volume of the 'Law Magazine and Law Review' (February 1861), devoted thirty of its pages to the trial of Lord Cochrane, using as its text the 'Autobiography,' the second volume of which had just appeared, together with the trial as reported by Gurney, and the report which appeared in the 'Times.' The tone of the article is not particularly friendly to Lord Ellenborough, but it is not unfair, and it reprobates in language far

stronger than I have ventured to use the biographical methods of Lord Campbell. The conclusions to which the writer arrives are summed up in the following language:—

'Law Magazine and Law Review,' vol. x. p. 232.

1st. That the verdict, if Lord Cochrane's case had been properly investigated, ought to have been Not Guilty.

2nd. That, considering the evidence given on the trial and the manner in which the prosecution and defence respectively were got up—considering the evidence given and the admissions made on behalf of the defendant—and considering the fatal blunder of allowing the innocent to be defended in conjunction with the guilty—the verdict returned was an honest one.

3rd. That Lord Cochrane *before* the trial did not know that Johnstone was guilty of the charges brought against him.

4th. That Lord Dundonald still leaves the impression on the mind that, though he took no part in the particular transaction for which he was prosecuted, yet he might have suspected that his uncle was connected with some trick or speculation in the funds by which his own speculations might be affected.

5th. That there is great probability from his headstrong and eccentric character that much of the mismanagement of the case originated with himself.

From this it is clear that the writer did not follow the 'Autobiography' unreservedly, but he adopted a good many of the explanations contained in it, and shifted the blame for the alleged miscarriage of justice from the shoulders of Lord Ellenborough to those of Lord Cochrane's Counsel and solicitors, especially the latter. He asserts that Counsel were not only carelessly and imperfectly instructed, but that their briefs on the important point of the colour of
p. 216. the coat gave them false information, 'and that the unfortunate Lord Cochrane's case was cruelly abandoned and himself disgracefully sacrificed.' Besides this, the writer accepted as true the charge against Gurney, of turning against Lord Cochrane after having acted as his confidential adviser, and followed Lord Cochrane in his assertion 'that
p. 212. he was the object of vindictive hatred and terror of official and political persons, who had few things so much at heart as his defeat and ruin.'

The reiteration of these insinuations, like the similar attack in Lord Cochrane's speech in the House of Commons, brought its Nemesis. The same 'Review,' in its next number (May) published 'Further Remarks on the Trial of Lord Cochrane,' and began by unreservedly withdrawing the charges against Gurney and against Messrs. Farrer & Co., to which, relying on the positive and circumstantial statement of Lord Dundonald, they had given credence and publicity. The facts which induced the writer to make this recantation will be found in an earlier chapter of this book, and are based upon the statement of the solicitors themselves, fortified by extracts from their bill of costs. But I cannot refrain from quoting here some of the concluding sentences of the article.

Vol. xi. p. 188.

p. 192.

How far Lord Cochrane was cognisant of what was going on, and acquiesced in his uncle's scheme—whether Cochrane Johnstone made him a confidant to any extent—found him a willing tool, or forced upon him a false position—contriving artfully to fix a deeper stain of complicity upon him than was just, we do not pretend at present to determine.

p. 200.

We wish we could come to another conclusion upon the evidence, and believe that Lord Cochrane was so entirely innocent as he so frequently and vehemently protested he was. It is repugnant to one's moral sense to associate mean trickery and pecuniary baseness with such personal chivalry and gallant qualities as Lord Cochrane possessed. We sympathise with the desire to prove that it is untrue that a man stamped with the true marks of nobility, genius, and greatness, has ever in any relation of life sunk to the condition of one of weak principles, petty aspirations, and ambiguous dealing. It is repulsive to degrade the hero to the level of a stock-jobbing trickster, or to examine into extenuating circumstances, striving to diminish his degree of guilt. Yet history, experience, and even the consideration of the nature of the human mind, forbid us to deny the possibility or even the high improbability, of such a conflict of character and repugnant conduct. We wish to believe in Lord Cochrane's entire disconnection with the hoax of February 21st, 1814, and had it been possible we would gladly have accepted all the statements in his 'Autobiography' as absolutely true; but we must admit that

we now leave the subject of this trial without any feeling of satisfaction.[1]

Very different treatment would have been meted out, we may conjecture, by this writer to 'the positive and circumstantial statement of Lord Dundonald,' had he been in possession of the following facts as to the circumstances under which the 'Autobiography' was written and the authorities on which it relies.

In the Preface to the first volume of the 'Autobiography' Lord Dundonald expresses his thanks to a Mr. G. B. Earp, 'whose zeal has exhumed from documents, almost in my own estimation beyond comprehension or arrangement, the mass of facts condensed within the compass of this volume.'[2]

This acknowledgment, however, very inadequately expresses the share taken by Mr. Earp on the production of the book. It is more accurately described in the terms of Lord Dundonald's will, when he declared that he left ten per cent. of all the money due to him by the British, Chilian, Peruvian, and Brazilian Governments to Mr. Earp, to whose 'literary exertions will be mainly owing any recovery of the said sums.'

It so happened that in the month of July 1862 this gentleman was called before the Committee for Privileges of the House of Lords, appointed to determine the succession to the Dundonald Peerage. One of the chapters in the 'Autobiography' had an important bearing on the question at issue, and Mr. Earp was strictly examined as to the process by which the book was composed. With the point before the Committee we have nothing to do, but some of his answers are of great importance, for he expressly stated that the whole of the Memoir, and not that one chapter only, had been written by the method thus described by him. 'My general practice in writing the book was to write it from his documents, not from his words, because I

Evidence, p. 88.

p. 86.

[1] Both these articles were reprinted with a preface by the Hon. H. S. Law, 1877. See p. 375, *infra*.

[2] This was not the first literary work in which Mr. Earp had assisted Lord Dundonald (see the preface to *Narrative of Services in the Liberation of Chili and Peru*, by Thomas, Earl of Dundonald, p. xxii.).

frequently found his memory fail of late years. I wrote it from his documents, and in general he made very little, if any, alteration; he was quite content with it.'

In answer to a further question, he said:—'His memory had begun to fail very seriously; so much so that I took many things from his lips, but I made it a practice never to insert anything unless I had documents to verify it, and by that means I found many of his statements not erroneous from principle, but erroneous from recollection.' Evidence, p. 87.

This process of verification produced curious results, as we shall see by-and-by, and we shall also be able to form some opinion as to the documents by the aid of which it was carried out. When pressed as to particular statements, the witness was unable to say with any certainty how much of them was his and how much Lord Dundonald's, and one of the most important of them all was, he admitted, supported by no documentary evidence whatever. Unfortunately he had not preserved his own manuscript. His communications with Lord Dundonald, he said, were daily. *ib.*

'I went to his house, or he came to my house; our communications were daily, and always upon the point next to be treated in the book. Anything that he might recollect, or anything that I knew, I took down from him, taking care first to verify it before it went to the Public.' p. 88.

Mr. Earp's correspondence, as attested by him before the Lords' Committee, gives us further illustrations of the way in which he collected information, verified facts, and consulted 'documents.'

As early as January 1859 he was in communication with a certain William Jackson, a former secretary of Lord Dundonald's, whose name has already occurred more than once in the course of this narrative, and about whom there will be something further to say almost immediately. The first letter is as follows:—

Earp to Jackson.

14 Gloster Grove West, Old Brompton, Middlesex,
January 20, 1859.

MY DEAR SIR,

I have to-day been looking over your excellent poem, the 'Gambyriad,' of which, though the subject is out of date, the Letter marked B. 8, p. 89.

notes appended are of importance. From the printed notes I have an idea that you may possess other books or papers relating to the earlier portion of his Lordship's career, and, if so, their loan would be very acceptable, since a very large portion of his Lordship's papers is lost, left no doubt somewhere or other where his papers have been deposited; but where he has no recollection. If you can assist me in this way, or in any recollections of his early career, which his Lordship has no doubt recounted to you over and over again, you would be rendering both to his Lordship and myself a great service, or if you have at any time made notes of such conversations, they would add much to the interest of the first part of the English work, for which the materials are not so abundant as I could desire. If you see all the papers you will be gratified by the extensive and favourable notice which has been taken of the 'Chili and Brazil,' and I have every expectation that they will turn out for good. If the Brazilians can read the 'Times' criticism, and not do justice to every officer, they must be a shameless set.

I am, dear Sir,

Yours truly,

W. JACKSON, Esq. G. B. EARP.

In a subsequent letter of April 21st, 1860, Mr. Earp says:—

Letter marked B. 4.

I don't know whether you have come across anything else between 1812 and 1818 that may be useful. I am sadly deficient in materials for that period.

That this demand was successful we gather from another letter of the 3rd May:—

B. 5.

I am very much obliged for the parcels you have sent me. They are of great use as bringing up matters which Lord Dundonald's memory no longer retains, and of which his sons have only imperfect remembrance. Even the merest scrap containing his name may throw light upon what would otherwise be obscure, as in several instances is the case from what you have kindly sent. Anything else you may find will be truly acceptable.

And again on the 26th May:—

B. 6.

I have told his Lordship of the letters and extracts you have so kindly sent, and he is much gratified, telling me to ask you for any scrap which may throw light on matters from 1814 to

1818. It is very odd what can have become of his own papers for that period. He has no recollection where they are, but says his papers were at some warehouse—he cannot remember where —and that some chests of them must be lost.

Lastly, in an undated letter written sometime after Lord Dundonald's death, when Mr. Earp was engaged upon an additional volume of the 'Autobiography,' which, however, he did not live to complete, he writes to Jackson:—'Any suggestions from you will be valuable, as all your suggestions have been.' And Jackson describes his contribution as follows, in a letter to Mr. Earp, dated October 5th, 1860:— Letter marked B. 8.

If there is any point on which my memory (though extremely defective) might possibly serve to give you any further information, I would task it severely to call to mind any facts of which you entertain a doubt of being already fully and correctly informed, that is to say, I would endeavour to answer your questions on any subject of which I ever had personal knowledge. A. 7.

William Jackson was an old man of seventy-eight when his evidence was taken on Commission before an Examiner appointed by the Lords' Committee for Privileges on July 30th and 31st, 1862. His evidence on oath and the letters which he admitted to be written by him, confirm, so far as any statements made by such a man can confirm anything, the part taken by him in providing material for Lord Dundonald's biographies. They also show him to be an unscrupulous calumniator, to have detained Lord Cochrane's letters under threat of publication unless he were paid to give them up, and to have shuffled and equivocated under examination, especially on the point as to whether he had received money for his evidence. Lady Dundonald (Lord Cochrane's widow) on her oath before the Lords' Committee said of him: '*I have always despised the man, and look upon him as the greatest enemy my husband ever had in his life, and the ruin to his purse and character. Alas, Lord Cochrane had much more confidence in him than he deserved.*' No one can read his evidence without endorsing Lady Dundonald's words, and feeling that they have Evidence, p. 120.

now the key to much of the ill-judged and disastrous conduct of Lord Cochrane's affairs.

The acquaintance between the two commenced by letter in 1811. Jackson was then a young man of six-and-twenty, and had been a clerk in Doctor's Commons. He had written a poem called 'The Rape of the Table; or, Ten Honest Lawyers,' relating to Lord Cochrane's differences with the Prize Court at Malta. He sent a copy of this, with a commendatory letter from the poet Crabbe, to Lord Cochrane, who expressed himself as pleased with it,[1] and this was the beginning of a correspondence which lasted down to 1860. They did not meet, however, until 1814. In January of that year Lord Cochrane wrote to him to say that he was probably going to America with his uncle, Sir Alexander, and added, 'I hope, however, as the poem which you have had the goodness to write on the subject of Lord Gambier's trial is so nearly finished that I shall be able to carry some of the copies with me to America, where the "essence of all evidence"[2] has attained the situation of Master Attendant of Halifax Dockyard.' Within a few weeks of this letter, the Stock Exchange fraud was perpetrated, and in the month of March Jackson came up to London and became Lord Cochrane's private secretary. He continued in this post up to Lord Cochrane's departure from England, followed him in 1821 to South America, where he appears to have acted as paymaster, doing extra duty as secretary, and on returning to Europe remained in constant correspondence with him up to his death. During Lord Cochrane's imprisonment in the King's Bench, he attended him daily and wrote for him at all times he was wanted, and he said he considered himself his most intimate friend.[3] He asserted that he was consulted

Letter A. 3.

A. 5.

'Chili and Peru,' vol. ii. pp. 300, 301.

Evidence of W. Jackson, p. 19.

[1] 'This "Rape of the Table," as it was termed in a poem afterwards written on the occasion by my secretary and friend, Mr. William Jackson, caused great merriment.'

'Autobiography,' vol. ii. p. 171.

[2] This seems to allude to one of the sailing masters who had given evidence unfavourable to Lord Cochrane at the Gambier Court Martial.

[3] Lord Dundonald left £100 in his will to William Jackson, 'his steady friend and former secretary.' Further allusions to him will be found in the continuation of the *Autobiography* by the eleventh Earl, vol. i. pp. 104, 126—in the one-volume edition published by the present Earl, p. 314—and in Lord Dundonald's *Narrative of Services in Chili and Peru.*

by Lord Cochrane about all the affairs connected with the fraud, writing his defence and drawing up his charges against Lord Ellenborough,[1] and that he had written several pamphlets to establish Lord Cochrane's innocence of the fraud, which he considered conclusive; papers produced by him showed that he was in communication with Butt as late as 1831.

Evidence of W. Jackson, p. 19.

The letters he had received from his Lordship had been all restored, part to Mr. Earp, part to Lord Dundonald (the son). He said that when 'Mr. Earp was writing for his Lordship, he kept writing to me for information. I used to give him all the information I could give him.' He was doubtful whether he had seen at any time the proof-sheets of the 'Autobiography.'

p. 11.

The eleventh Earl in the preface to his continuation of the life of his father thus alludes to these transactions:—

> My father's papers were at the time of his death in the hands of a gentleman who had assisted him in the preparation of his 'Autobiography,' and to this gentleman was entrusted the completion of the work. Illness and other occupations, however, interfered, and after a lapse of about two years he died, leaving the papers, of which no use had been made by him, to fall into the possession of others. Only after long delay and considerable trouble and expense was I able to recover them.

The chapters in the 'Autobiography' devoted to the trial of Lord Cochrane cover, of necessity, ground which is already familiar to the reader, and to enter into a detailed examination of them, page by page, would entail a constant repetition of matter introduced elsewhere; in addition to which the rambling way in which they are written renders it difficult to follow them in any logical or chronological order. But it is on these chapters that the popular belief in Lord Ellenborough's oppressive conduct rests, and if their claim to authenticity be not exposed by a careful probing of the statements out of which they are built up, this book will have been written in vain. It is necessary, therefore, at the risk of being tedious, to select some of the

[1] 'There were 14 charges I drew up for him; they were ordered to be printed by the House of Commons, but they were expunged afterwards.' Evidence of W. Jackson, p. 19.

grosser misrepresentations for criticism, and it will be a relief not only to me, but to all who may read these pages, to find that they are not a legacy of hate bequeathed by a man who had suffered much, but rather the compilations of a secretary careless of facts and dates, resting on material supplied by a man whom Lady Dundonald describes as the greatest enemy her husband ever had in his life.

I will first take the following extracts from the 'Autobiography,' which speak for themselves, and which contain Lord Cochrane's final asseveration of his innocence:—

'Autobiography,' vol. ii. p. 317.

When an alleged offence was laid to my charge in 1814, in which, on the honour of a man now on the brink of the grave, I had not the slightest participation, and from which I never benefited nor thought to benefit one farthing, and when this allegation was, by political rancour and legal chicanery, consummated in an unmerited conviction, and an outrageous sentence, my heart for the first time sank within me, as conscious of a blow, the effect of which it has required all my energies to sustain. . . . .

The Government of my country has, though often invoked, refused to re-investigate my case as impossible in form, and from fear of creating a precedent. Nevertheless, I will, repugnant as is the subject, re-state the facts, and, posterity being my judge, have no fear as to the verdict. . . . Though approaching the subject with distaste, I do so with confidence that my unvarnished tale will not be told in vain.

As an introduction to the narrative, the quotations from Lord Campbell and Lord Brougham which formed the text of my last chapter are inserted at length, with the exception of some not unimportant paragraphs which I have there printed in italics. Between them are given some letters relative to Lord Cochrane's re-instatement and to the interest taken by King William IV. in his cause. One

p. 324.

of them is from Lord Brougham, 'ever my constant and steady friend,' dated in March 1844, and containing the following statement, which the writer authorises Lord Dundonald to make to the Duke of Wellington:—

First, that William IV. only objected to the Bath being restored *at the same time* with your rank, and not absolutely at

all times. Secondly, that your Counsel was clearly of opinion that the verdict *as concerned you was erroneous*, and I always concluded that you had sacrificed yourself out of delicacy to your uncle, the person really guilty. The restoring you to rank without your honours is too absurd and unfair.

It has always seemed to me that the gradual process by which Lord Dundonald was restored to the position he had occupied before the fraud was a very strong indication that the Government wished their conduct to be understood as a genuine pardon for an offence that had been committed, and not as a recognition that the verdict had been either unjust or erroneous. From this point of view the delay in his restoration to the Order of the Bath is neither absurd nor unfair.

Another letter written in November of the same year by Sir Robert Peel gave, as a reason against re-opening an inquiry into the charges that had been made against Lord Dundonald, the 'fact that thirty years have elapsed since the charges to which the free pardon had reference were the subject of investigation before the proper judicial tribunal of the country. . . . I beg leave to refer your Lordship to the letter which the Earl of Haddington, the First Lord of the Admiralty, addressed to your Lordship in the year 1842.' I have been unable to discover any trace of this letter; were it to see the light it might enable us to know what was the view of the pardon taken by the Admiralty. 'Here,' says the 'Autobiography,' 'was the whole secret why I had never been able to obtain an investigation of my case, and why the Admiralty declined to investigate it, notwithstanding that an appeal from the verdict had been refused by the Court of King's Bench, *though I had then in Court such additional evidence as must have set aside the verdict.*' How incorrect are the words which I have printed in italics the previous pages of this book have already shown, and I shall have occasion to refer to the subject again.

'Autobiography,' vol. ii. p. 327.

The succeeding pages contain what is called a brief outline of the circumstances which led to the trial, and which are already known to us, partly through Lord Cochrane's affidavits, partly through the story as

previously detailed in the present narrative. Some passages, however, require notice.

At p. 330 the 'attempt to raise the public funds by the dissemination of groundless news to the prejudice of the Stock Exchange speculators,' is alluded to as 'one of the common deceptions which, I am told, were then, as now, practised by parties connected with the transactions of the Stock Exchange.'

At p. 342, 'of the subject of the prosecution itself I will here say one word. It was that of one set of stock jobbers and their confederates trying—by means of false intelligence—to raise the price of "time-bargains" at the expense of another set of stock jobbers, the losers being naturally indignant at the successful hoax.'[1]

I do not think this an accurate description of the motives which actuated the Stock Exchange Committee. Without giving them credit for any superfine morality, I think that the prosecution was due to the fact that it was not the members of the Stock Exchange themselves, but the outside public, who were the victims of the 'hoax.' But, at any rate, if these passages are to be taken as declaratory of Lord Cochrane's real sentiments, they show that to the end of his days he never recognised the moral obliquity of the fraud with which he was charged.

p. 333. Having narrated his return to London from the *Tonnant* to rebut the insinuation spread against him, Lord Cochrane is made to say:—

I immediately consulted my legal adviser. The result was that an affidavit was prepared and submitted to an eminent barrister, Mr. Gurney, to whom I disclosed every particular relative to the visits of De Berenger as well as my own previous though very unimportant transactions in the public funds. I was advised by him and my own solicitors to confine myself simply to supplying the authorities with the name of De Berenger as the person seen in uniform at my house on the 21st. With this suggestion, wisely or unwisely—but certainly in all honesty—I refused to comply, expressing my determination to account for

[1] *Cf.* p. 383 of the same volume, 'my unjust conviction of having participated in a *trumpery* hoax.'

all my acts of the 21st of February, even to the entire occupation of my whole time on that day. Finding me firm on this point, the affidavit was settled by Mr. Gurney and sworn to, *the name of De Berenger for the first time thus becoming known to those who were in quest of him.*[1] . . . I will here notice another circumstance—viz. that the very Mr. Gurney who had advised me in the matter of my affidavit, and to whom I had unreservedly communicated every circumstance connected with my private affairs, as well as those connected with the visit of De Berenger, was afterwards chosen by Mr. Lavie, the solicitor to the Committee, as the leading Counsel for the Stock Exchange at the subsequent trial against me. I simply relate the fact without comment.

'Autobiography,' vol. ii. p. 334.

It would be difficult to make a statement more circumstantially, and the writer of the article in the 'Law Magazine and Review' commented strongly on Gurney's conduct. We have seen what foundation there is for the story as told in the 'Autobiography.' The refutation for it is contained in Lord Cochrane's own affidavit sworn in Court on June the 14th, 1814, where he says that he—

Vol. x. p. 210.

Without any communication whatsoever with any other person, and without any assistance, on the impulse of the moment, prepared the before-mentioned affidavit, which he swore before Mr. Graham, the magistrate, on the 11th.

supra, p. 185.

This affidavit is actually printed in the 'Autobiography' itself, and affords a striking illustration of the way in which Mr. Earp verified his facts by documents.

Vol. ii. p. 367

The real facts were not unknown to Lord Cochrane. On a previous page of this book will be found Gurney's own explanation made in Court in Lord Cochrane's presence, and at the risk of repetition I give it again here. In his trial at Guildford in 1816 for breaking out of the King's Bench Prison, Lord Cochrane had alleged that the Counsel who had appeared against him on that occasion had actually received retaining fees from him, had attended consultations on his case, and yet to his

[1] On the direct contradiction between this and the second Stock Exchange Report I have already commented.

astonishment appeared in the list against him. Mr. Gurney was in Court, and rising up, said:—

supra, p. 275, and Hone's Edition of the Trial, p. 16.

It is not true. I never was retained by the noble lord in the case to which he alludes. I was indeed consulted and received a fee of five guineas on the part of the noble lord respecting a prosecution for a libel, and I wrote my opinion on that subject. Three weeks after I was offered a retaining fee in the prosecution against the noble lord, but I refused to accept it, having been already engaged against him.

Immediately following the attack upon Gurney comes a highly characteristic passage.

'Autobiography,' vol. ii. p. 334.

A circumstance may be mentioned here which has an important bearing on the subject. My letter to the Admiralty giving my reasons for asking leave of absence for the purpose of rebutting the insinuations against my character, contained most material matter for my exculpation. It was written to Mr. Secretary Croker, but when I afterwards moved for and obtained from the House of Commons an order for the production of my correspondence with the Admiralty, *this letter was not to be found, though all others asked for were!* Had the letter been produced, it must have had great weight with the House, the adverse decision of which I mainly ascribe to its non-production.

Whether any such letter was ever written seems more than problematical. By referring to an earlier chapter of this book, it will be seen that on the 22nd of March, 1814, a fortnight after leave of absence had been granted, Lord Cochrane wrote to the Admiralty enclosing the affidavits sworn by his servants and others, which he may fairly have considered to contain 'matter most material for my exculpation.' This letter is still in the Admiralty Records. I have given extracts from it on a previous page, and it was not included amongst those moved for by Lord Cochrane on the 7th of March, 1816.

supra, p. 40.

supra, p. 245

It is true that amongst the papers moved for on that occasion were two letters said to be dated on the 8th of March, 1814, and written respectively by the Admiralty Secretary to Lord Cochrane, and by Lord Cochrane to the Secretary. 'Hansard' is silent as to whether they were produced or not,

but certainly Lord Cochrane made no complaint on that score in the House of Commons on that occasion. Neither of them is now to be found amongst the Admiralty Records, nor is there any reference to them in such of the correspondence on this subject as is there preserved.

The writer of this passage in the 'Autobiography' would seem to insinuate, though his meaning is not clear, that the non-production of this letter was one of the causes which led to Lord Cochrane's expulsion from the House of Commons; he cannot be supposed to mean that such a letter could have had any effect on the motion nearly two years afterwards to impeach Lord Ellenborough for conduct at the trial. But it was in connection with this latter debate that Lord Cochrane made his only motion for papers.

The matter may seem to be a small one, but it is important as illustrating the way in which the 'Autobiography' was composed; Lord Dundonald misrepresenting, or possibly confusing; Mr. Earp misunderstanding and failing to verify; the result embodied in a circumstantial paragraph which, if left without critical examination, is calculated to convey a strong impression of the innocence and *bona fides* of Lord Cochrane, and to bring a strong additional instance of injustice and oppression. To round it all off, the writer goes on to say, 'I have been particular in recording dates.'

With an assertion at p. 338 that 'I was careless about my defence—had nothing to do with the brief beyond a few rough notes, and never even read it after it was finally prepared for Counsel,' I have already dealt fully, and I have given my reasons for disbelieving it.

Another statement which I believe to be equally fallacious is that De Berenger had communications with both the Government and the Stock Exchange before the trial for the purpose of implicating Lord Cochrane. No proof of this is attempted to be given except a so-called inference from an expression in a written statement of De Berenger's on July the 19th, 1814, from the King's Bench, that *since his confinement there* he has neither written or otherwise applied directly or indirectly to any of the officers of

'Autobiography,' vol. ii. p. 340.

Government for the purpose of disclosure, and therefore it is suggested in the 'Autobiography' that he might have done so previously to the trial.

At p. 341, one very important admission is made by the writer himself, who says :—

> I do not blame the Judge for not taking these matters into account,[1] for, confident in my entire innocence, I could not see their importance or bearing, and did not even communicate them to my solicitor till too late.

'Autobiography,' vol. ii. p. 343.

The last paragraphs of Chapter XXXVIII. afford an illustration of evil motives constantly imputed, never proved.

> It is clear that the influence and vindictiveness with which this most unjustifiable prosecution was carried out against me arose from motives far deeper than the vindication of stock-jobbing purity—viz. from a desire in more influential quarters to silence, if possible, an obnoxious political adversary.

p. 344.

An attempt is made at the beginning of the next chapter to support this insinuation by the fact of a certain Mr. Lavie being selected to act as the solicitor for the Stock Exchange. Mr. Lavie is asserted 'to have displayed so much tact on Lord Gambier's court-martial' that his selection afforded 'additional suspicion that an influence other and higher than that of the Stock Exchange Committee was at work.'

p. 345.

pp. 1–104.

As in various publications connected with Lord Gambier's trial I had spoken very freely of Mr. Lavie as regarded the fabricated charts, exposed at the commencement of this volume, there could be no doubt of his not unreasonable personal animosity towards myself. . . It became too apparent that from the selection of Mr. Lavie as prosecuting attorney I was not so much the object of a Stock Exchange prosecution as of the political vindictiveness of which I have spoken, and which had gone out of the usual course to secure his services. *That there was*

[1] Alluding to De Berenger's statement of the 19th of July, 1814, and to a letter alleged to have been written to Lord Cochrane by De Berenger on the 27th of April, 1814, in which he said that his unfortunate visit on the 21st of February was, with its object, correctly detailed in the affidavit of March 11th.

collusion between a high official at the Admiralty and the Committee of the Stock Exchange on this point I do not hesitate for one moment to assert; nor do I think from previous revelations in this work that many of my readers will be inclined to differ with me.

Upon the question of 'previous revelations' and the 'fabricated charts,' it is no part of my task---nor have I the desire—to enter. If the accuracy of the statements contained in the chapters of the 'Autobiography' relating to the Stock Exchange trial affords any criterion of the treatment therein of other controversial subjects, few persons, I think, will be disposed to accept these charges without further inquiry. Of the professional character of Mr. Lavie I know nothing, nor of the motives which induced the Committee of the Stock Exchange to employ him. He has incurred the fate common to all those who figured against Lord Cochrane at the trial, and to most of those who acted for him, of meeting with lavish vituperation. How he exceeded his professional duties by getting up a difficult case with remarkable skill and completeness, I fail to see, nor how the fact of his being concerned in the Gambier trial affects matters. Still less is it apparent how his selection proves collusion between 'a high official at the Admiralty'[1] and the Stock Exchange.

Not content with this, Lord Cochrane is made to say that it was not until *after the trial* that he became aware that Mr. Lavie was acting for the prosecution. This is scarcely credible. Lavie was called, as we have seen, as a witness, and then stated that he was the attorney for the prosecution. Lord Cochrane was not in Court during the trial, but he was in full communication with his Counsel during its progress. More than this, Mr. Cochrane Johnstone, who was in close association with him, was present at the striking of the special jury in May, and could not have been ignorant as to who was appearing on the other side; and it appears from the newspapers of the

'Autobiography,' vol. ii. p. 345.

[1] This high official is not expressly named in these chapters of the *Autobiography*, but there can be little doubt that John Wilson Croker, the Parliamentary Secretary to the Admiralty, is the person aimed at.

day that Mr. Lavie attended on behalf of the Stock Exchange when the witnesses went before the Grand Jury on the 27th of April. Is it likely that Lord Cochrane was kept in ignorance? He is made to say that had he been aware of this 'curious coincidence,' his confidence arising from conscious innocence would have vanished, and he would have taken every precaution to get up his case. As to whether Lord Cochrane really did neglect his case in the way he alleges, I have already had something to say; but it will require more proof than is contained in the 'Autobiography' to make me believe either that he was ignorant of Mr. Lavie being retained, or that this plea is anything but an afterthought.

'Autobiography,' vol. ii. p. 346.

The next few pages are devoted to a consideration of the evidence at the trial, on the point of the colour of the uniform worn by De Berenger at his interview with Lord Cochrane; whether it was red, as maintained by the prosecution; or green, as asserted by Lord Cochrane in his affidavit. Into the arguments I do not enter, the matter has already been discussed *ad nauseam*; but when the writer urges against Lord Ellenborough, that the latter adopted, without hesitation and wrongfully, the hypothesis of the coat being red, and that he put it unfairly to the jury, it is my duty to again point out the fact that, at the trial, Lord Cochrane's Counsel abandoned the theory of the green coat altogether, and that Serjeant Best in his address to the jury tried to explain away what he called the mistake in Lord Cochrane's affidavit; that the defence did not ask Dewman, the one of the four servants who had seen De Berenger most closely, a single question as to the coat; that the maid-servants, though in attendance, were not called, and that this course was pursued, not by inadvertence, but on the mature decision of the Counsel and of the solicitors, who themselves had been instructed in writing by Lord Cochrane, that De Berenger on the occasion of his visit 'wore a grey great coat without any trimming, and had *a green coat, or a coat with a green collar*, under it.' Even if Lord Cochrane and the servants were right, it is intolerable to charge the Judge with oppression and

partiality because he accepted the admission made openly in his speech to the jury by the defendant's Counsel.

A further point is urged against the Lord Chief Justice, that he told the jury, without any evidence to support it, that De Berenger pulled off his red uniform and star and medal in Lord Cochrane's presence. But, it was stated in Lord Cochrane's affidavit of the 11th of March, that 'he put up his uniform' in a towel, and, as the defence had already admitted that this uniform was red, it is difficult to see how this is a misdirection.

'Autobiography,' vol. ii. p. 350.

supra, p. 37.

With regard to the star and medallion, it is not quite so clear. The last person who spoke to seeing the star was Shilling, the post-boy, who said 'it' (the red coat) 'had a star of some sort upon it,' but it is not quite clear to what period of the journey from Dartford to London he referred. Of the medallion we last hear from one of the landlords on the road. It is of course quite possible that the medallion which hung round the neck might have been taken off and put in De Berenger's pocket at any stage of the journey; with regard to the star, that would depend on how it was attached to the uniform. If it was sewn on, as seems to have been the case, it would probably have remained on. The aide-de-camp's uniform was sufficiently incongruous of itself to be unaffected by such an addition. Odell, the waterman who fished out the bundle, merely says he found a star: Wade, the Stock Exchange Secretary, who received the bundle, says the star was in two pieces, and was afterwards sewn together. *At any rate, it was in exhibition before the jury*, and it is hardly probable that such Counsel as the eminent men who defended Lord Cochrane and De Berenger would not have corrected the Judge on such a point, if he were palpably misdirecting the jury in the teeth of the evidence. Once admit that De Berenger came before Lord Cochrane in a scarlet aide-de-camp's uniform with blue facings and gold lace, it is not too much to say that he appeared 'fully blazoned in the costume of his crime.' At the same time, it is true that the Lord Chief Justice did allude to the possibility of his having on the star and the medal, and it will

Trial, p. 115.

Wright, of Rochester, p. 101.

For description of the star, see *supra*, p. 94.

Trial, p. 486, *infra*, p. 489.

be for the reader to say if this was a misdirection, and, if so, how far material?[1]

Whether Lord Ellenborough said to the jury, 'What did Lord Cochrane think of the star and medal?' or only 'if he actually appeared stripped of his great coat, and with that red coat and uniform, star and order, which have been represented to you,' is a matter of some importance; the former is from the 'Times' report, the latter taken from the shorthand notes. It would have been surprising if Counsel had not intervened at a direct statement being made of facts which had not been proved; but they could have no grounds for objecting to a hypothetical suggestion.

This raises the point of the authenticity of the revised report, which has been used as another weapon for assailing Lord Ellenborough, 'which revised report I affirm was made up for the occasion.' 'From the reports in the daily papers, which were unquestionably accurate, the public mind was in a state of great ferment at the unfairness of the trial as regarded myself, and therefore the prosecution got up the "revised report."' If words have any meaning, this is a charge brought against the Lord Chief Justice of lending himself to an act of incredible baseness, of going through his address to the jury for the purpose, not of seeing that it was accurately reported, but with the object of making it appear more favourable to the prisoner than it had been, as delivered. The weight of this accusation must rest on the shoulders of the writer of the 'Autobiography,' for Lord Cochrane had finally withdrawn it in

'Autobiography,' vol. ii. p. 358.

[1] The effect of this part of the evidence is very well conveyed by Mr. Wrottesley in his speech on Lord Ebrington's motion: 'He had since read the trial with as much attention as he could read anything, and the effect of it on him was to re-establish that conviction which he had at first of Lord Cochrane's guilt. De Berenger had been traced from Dartford in the costume of his crime. Every witness had spoken to the star, &c., which he wore till he arrived in London. The waterman who saw him into the coach did not mention the star, but he stated his coat to have been red; and Crane, the hackney-coachman, had most distinctly sworn to its having been of that colour. Now, if it was not asserted by these witnesses that they saw the star and order sworn to by others, as they had given evidence to the colour of his coat being red, he thought it of little importance that they had not mentioned the star, &c.

Hansard, vol. xxviii. p. 774.

his 'Letter to Lord Ellenborough.' 'The words which I have written in capitals and italics do not appear in any other report of your Lordship's charge that I have hitherto seen; but the shadow of a doubt conveyed by these words is so completely buried in the overwhelming certainty of the whole, that I am not surprised it should have escaped the observation of the reporters: and *I freely acquit your Lordship of any subsequent interpolation.*' 'I admit, however, that notwithstanding your Lordship's occasional sententiousness, there must have been a concurrent deviation in the account of different persons from the language actually used by your Lordship, but I consider the strong expressions above stated rather as a consolidation than a misrepresentation of your Lordship's meaning.' Apart from this retractation, the calumny would of itself be rejected with the scorn it deserves, and which was freely poured upon it when uttered in the House of Commons. If ever a Judge sat on the Bench who was utterly incapable of such conduct it was Lord Ellenborough; rough, masterful, but the soul of honour. A man who was as dauntless in courage as he was uncompromising in speech: of him we are asked to believe that he sat down and whittled away his charge, taking out a phrase here and inserting an 'if' there.

Letter to Lord Ellenborough, p. 89.

p. 96.

Of course there is still the question as to which was accurate, the reports of the daily Press or the verbatim notes of the shorthand reporter to the Houses of Parliament. It may be left to common sense. Newspaper reporting has made great strides since 1814. The space assigned to the reports of cases is much greater, the facilities afforded to the Pressmen in Court are vastly improved; yet to-day no sane person would maintain that the report of a speech or of evidence in the columns of the 'Times' was likely to be more authentic than the shorthand writer's note.[1] It should be observed that there is no charge of garbling the evidence, but only certain portions of the summing-up:

[1] The *Times* report will be found in the Appendix, and it will, I think, be obvious to any who reads it that it does not profess to be more than a summary. Lord Ellenborough's charge only occupies two and a half of these pages (pp. 513–515), while as printed from the shorthand notes it extends to sixty-two (pp. 411–472).

and, further, it should be remembered that Lord Cochrane was not himself in Court, and no complaint of misrepresentation, so far as I know, proceeded from anybody who actually heard the summing-up, except from De Berenger in his book, 'The Noble Stock Jobber.'

The 'Autobiography' next deals with the question of a new trial, and to show how the poisonous seed sown by Lord Campbell has borne fruit, I will quote the passage:—

'Autobiography,' vol. ii. p. 354.

> Lord Ellenborough refused the application because all the persons tried were not present to concur in it, though the law gave me no power to compel their attendance. The evidence on which it was grounded, however, is none the less conclusive because Lord Ellenborough and his colleagues declined to receive it, or even to hear it, but in place of so doing immediately delivered their outrageous sentence against me.

The fallacious nature of all this has been already shown, the confusion between the two occasions, on one of which Lord Cochrane could not be heard, on the other of which he could be and was. There is, in addition, the false charge, that they declined to hear evidence which, we shall see, was not, and could not have been, before them; and also the untrue statement that sentence was delivered at once.

The facts are next given with which it is asserted that Lord Cochrane was prepared on his appeal to the Court of King's Bench. They consist of those seven affidavits originally printed in the 'Letter to Lord Ellenborough,' and which I have already alluded to.

supra, p. 284.

p. 355.

The first two are by 'respectable tradesmen' residing in the neighbourhood of the Marsh Gate, and named respectively Miller and Raiment. Miller swore that on the 21st of February he saw the supposed messenger get out from a chaise into a hackney-coach, that he was dressed in green with a grey great coat, and there was no red upon any part of his dress.

Raiment swore that he saw the supposed messenger get out of the chaise into the hackney-coach, and, on getting out, his great coat, partly open, enabled the deponent to see the coat underneath, and it appeared to him to be dark green, like the sharp-shooters'.

The other five were by people who knew Crane, gave him a villainous character for profanity and dishonesty, and swore to alleged conversations of his. According to Charles King, Crane had said to him that 'he had been to see De Berenger, in order to identify him, but he could not swear to him, as many faces were alike'; that 'he did not see De Berenger's under-dress, as his coat was closely buttoned up'; and that 'he would swear black was white, or anything else, if he was paid for it.' Other deponents, Baldwin and Critchfield, swore much the same, but two men, James Yeowell and James Lovemore, gave a new turn to the matter by swearing that they had had a conversation with William Crane a few days after the 21st of February, when he told them that the person whom he took from a post-chaise and four at the Marsh Gate was no other than Lord Cochrane himself, and that after the trial Yeowell had taxed Crane with having declared before the Stock Exchange Committee that Lord Cochrane was the person.

'Autobiography,' vol. ii. p. 355.

p. 357.

'Lord Ellenborough,' says the 'Autobiography,' on this 'refused to hear a word of the abundant evidence *then in my hand*, and available for my exculpation.' The final application for a new trial, at which Lord Cochrane was heard as fully as the law permitted, took place on the 20th of June.[1] Now these affidavits which Lord Cochrane is represented as having in his hand on the 20th of June were none of them sworn until the 22nd of July, and those of Yeowell and Lovemore not until the 9th of August. The 'Autobiography' prudently does not assign any date to them, but in the affidavit of Baldwin there given there is reference to a conversation on the 2nd of July. Yet we are asked to believe that Lord Cochrane had them in his hand on the 20th of June. The art of misrepresentation can surely no further go, but it is on this sort of statement that some modern writers brand Lord Ellenborough as worse than Jeffreys.

p. 359.

Letter to Lord Ellenborough, App. vii.

These affidavits must be taken for what they are worth, but it is only fair to place against them the testimony of

Trial, p. 554.

[1] In his speech in Court on the 20th of June, Lord Cochrane never alluded in any way to Crane.

the Stock Exchange Committee in their second report, published on the 27th January, 1815. They declare, as we have already seen with regard to the evidence of William Crane: (1) that in his first examination (before it had been ascertained that Lord Cochrane resided at Green Street) he stated that the pretended Colonel Du Bourg wore a red coat under his great coat when he got out of the coach and entered the house. (2) That he never asserted before them, nor ever gave them any reason to believe, that the person whom he took in his coach was Lord Cochrane himself. (3) That he did not receive any portion of the reward that was offered for the apprehension of the pretended Du Bourg, and that the whole sum paid to him did not exceed £17, which included sundry expenses that he had incurred, and the hire of his coach for part of the time when he was in attendance on the sub-Committee.

supra, p. 237.

Even had Lord Cochrane been able to present himself before the Court of King's Bench armed with these affidavits, I very much doubt whether they would have produced the effect on the Court which he attached to them in his 'Letter to Lord Ellenborough.' Affidavits had already been rather overdone in the case. Besides Lord Cochrane's own, which had been abandoned by his Counsel on a very material point, Butt's pamphlet had contained a whole host of them. Thomas Dewman had made one previously to the trial, and he had been asked no questions on one of its most important statements (the colour of the coat). Lord Cochrane's other servants had made affidavits, but they had not been called at the trial. On the other hand, De Berenger's servants Smith and his wife were put in the box by Park to give evidence according to their affidavits, and had gone disastrously to pieces.

This should be borne in mind in estimating the effect which the fresh batch produced on the minds of the public, to whom they were communicated in the 'Letter to Lord Ellenborough,' and one should be correspondingly chary in attaching too much importance to them now. Had De Berenger refrained from setting up his *alibi* in Court, and

contented himself with subsequently producing his evidence in the shape of affidavits, he would have given a most convincing proof of his innocence to those excellent people who put statements which have not been sifted by cross-examination on exactly the same level with those that have undergone that process. The Smiths, the McGuires, the Donnithornes, and Tragears would have appeared on paper, and no doubt did appear in Counsel's brief, most respectable and reliable witnesses. We have seen how they figured on cross-examination, and we now know from De Berenger that their evidence was false. And although Lord Cochrane could not be held liable for De Berenger's witnesses, the affidavits of two of them, the Smiths, had appeared in Mr. Butt's pamphlet, for which Lord Cochrane had been shown to be partly responsible.

Trial, p. 200. Letter to Lord Ellenborough, p. 91.

Lord Cochrane, however, has not done with Crane, and he is able to show that shortly before the trial he had been convicted on a very bad charge of cruelty to his horses, and that twelve years afterwards he was sentenced to transportation for theft. Had the former of these facts been known to the defence at the trial, it would hardly have affected the result. De Berenger would still have been traced *into* the hackney-coach in red, and the refusal to ask the servants the colour of the coat must have been fatal to the hypothesis of its being green. We are actually assured that Lord Ellenborough and his colleagues refused to hear the facts relative to Crane's conviction, whereas they were not known to Lord Cochrane until afterwards, and appear never to have been put on affidavit at all. Crane's evidence is the *pièce de résistance* in this part of the 'Autobiography,' and on it the writer has expended all his strength with the object of inducing the public to believe that De Berenger's visit was the only evidence against Lord Cochrane. With those who have read the trial such tactics can be of no avail, but the vast majority, whose knowledge of these transactions is derived solely from the 'Autobiography,' would arise from its perusal entirely ignorant of the close business relations between Lord Cochrane, Cochrane Johnstone, and Butt, of the fact that the notes found on

'Autobiography,' vol. ii. p. 362. p. 360.

'Autobiography,' vol. ii. p. 362.

De Berenger were traced to them, or that Lord Cochrane had enjoyed the right of addressing the Court of King's Bench to obtain a new trial.

At the same place the 'Autobiography' states that even his solicitors had not taken the precaution of summoning his servants to give evidence as to the kind of dress worn by De Berenger. This has been discussed elsewhere, and I have no desire to labour it again, but I may point out that in the consultation of June 6th it was agreed that the servants should be in attendance at the trial. The silence of his servants on the trial was not due to any absence of precaution on the part of the solicitors, but to the well-founded opinion of solicitors and Counsel that they could not give evidence which would help Lord Cochrane.

supra, p. 156.

supra, p. 212.

p. 369.

There is a further misstatement which must not be allowed to pass. It is alleged as a proof of the vindictiveness with which he was pursued, that 'the other parties convicted on clear evidence were let off with imprisonment and half the fine inflicted on myself and Mr. Butt, whilst we who had nothing to do with the matter were fined £1,000 and, in addition, sentenced to the barbarous punishment of the pillory.' It is sufficient to point out that De Berenger was included amongst those sentenced to the pillory, and that there can be little doubt that that aggravation of the punishment was reserved for those of the defendants who were guilty in the eyes of their judges of having increased their crime by a defence involving perjury and subornation of perjury.

Chapter XXXIX. closes with the narration of Lord Cochrane's expulsion from the House of Commons, and the names of the forty-four members who voted in the minority. They comprise some of the most respectable names in the House,[1] and this makes it the more remarkable that on the only other division challenged by Lord Cochrane, that on his motion to impeach Lord Ellenborough when a great deal more was known of the circumstances connected with the

supra, p. 258.

[1] It was not until about the year 1834 that the Division lists came to be regularly published, and after inquiry at the House of Commons I have been unable to find any record of the names of the majority on this occasion.

trial, not one of them, with the exception of Sir Francis Burdett, could be found to support him; and one of them at least, George Ponsonby, the Leader of the Opposition, spoke strongly in vindication of the Lord Chief Justice. It would be difficult to imagine a higher tribute to Lord Ellenborough or one that showed how little the belief in Lord Cochrane's innocence was connected with that in his Judge's want of fairness.

I do not propose to follow any further the charges of misdirection and misconduct at the trial which are again launched at Lord Ellenborough in the concluding chapter of the 'Autobiography.' They relate principally to the star and the medal, and the red and the green uniform, and, as we have seen, are nullified by Best's admission in his speech and by the failure to call the servants to swear to the colour of the coat.

At p. 377 occurs the following passage:—

> I have merely taken those instances at random, and without comment further than necessary to enable the reader to comprehend them. As my judge is no longer here to reply to me, I abstain from comment, however much it might tend, now that the party spirit which ruined me has died out, to establish my innocence.

Judging from the sort of comment in which Lord Cochrane had indulged in the House of Commons, the autobiographers were well advised in refraining, and it may be left to the reader to judge how far regard to Lord Ellenborough has removed calumny and misrepresentation from their pages. Nor does this magnanimity extend to restrain them from 'adducing a few extracts from Lord Campbell's work relative to the trial of politically obnoxious persons.' 'Autobiography,' vol. ii. p. 377.

In support of this extracts are given from the veracious pages of Lord Campbell with regard to the trials of Leigh Hunt, Watson, and Hone. After the illustration I gave in a preceding chapter of Lord Campbell's method of describing a trial, I hardly think any sane person will be content to accept his statement on these matters without the most careful sifting of the evidence. To deal with these trials in detail is foreign to the scope of this work,

of the conscientious care with which Mr. Earp verified his documents.

'Autobiography,' vol. ii. p. 880.

'At the period of my trial Lord Ellenborough was not only Chief Justice of the King's Bench, BUT AT THE SAME TIME A CABINET MINISTER.'

A very trifling amount of research would have taught the writer that the Ministry, during the short life of which Lord Ellenborough was included in the Cabinet, was the so-called Administration of 'All the Talents' formed on the death of Pitt in 1806, and dissolved in the following year. Yet Mr. Fortescue, who really ought to have known better, has followed this statement in his recent monograph. In a letter to the 'Times' of November 17th, 1860, the eleventh Earl of Dundonald, after making some corrections with regard to the account given of the Basque Roads affair in the 'Autobiography,' went on to say:—

'Men of Action: Dundonald,' by the Hon. J. W. Fortescue, p. 98.

> A more serious error has escaped the notice of your correspondent, and this it is my duty to mention, viz.: The assertion of my father that Lord Ellenborough was a Cabinet Minister at the time of the trial in 1814. This I am informed was not the case. That Lord Ellenborough while Chief Justice held also the office of Cabinet Minister is well known, though, I believe, without having any official residence assigned to him. I am further led to believe that from no public acknowledgment of his retirement from this double office having been made, and no other Judge being appointed to the same, it was generally understood that he continued to co-operate with the Ministry. This was my father's impression, and hence the error of his comments. In future editions this error will be rectified and in the fullest manner explained.
>
> Your faithful servant,
> DUNDONALD.

The error, however, so far from being rectified and explained, is repeated in an edition published in 1862. In 1869 the same Peer published a continuation of his father's life in two volumes, and one would have thought the opportunity would have been taken to allude to this matter, but it was not. In the one-volume edition edited by the present Lord Dundonald in 1890, the following grudging

acknowledgment is made in a footnote to p. 421 :—'Writing nearly fifty years afterwards, Lord Dundonald fell into excusable error in speaking of Lord Ellenborough as still in the Cabinet, whereas in 1814 he only enforced the views of the Ministry from the Judicial Bench.'

Whether it was excusable on the part of any one who professes to write history may, I think, be questioned; we might give the benefit of the doubt, however, to a man of Lord Dundonald's age—hardly to Mr. Earp, who professed to verify every statement. The present Peer adds his own to the quota of error by apparently supposing that the Ministry which was in office in 1814 was the same as that of which Lord Ellenborough had been a member. It is elementary, but perhaps necessary, to point out that one was a Whig Government in which the leading spirit was Mr. Fox, the other the High Tory Administration of Lord Liverpool; and to say that Lord Ellenborough enforced the views of the Ministry from the Bench is an unfounded and unjustifiable observation which I am sure the present Lord Dundonald must regret.

The period of the formation of the Ministry of 'All the Talents' was hardly calculated to make a seat in the Cabinet an object of ambition to any one, least of all to a lawyer who had never been a prominent politician, and who then enjoyed on a life-long tenure a splendid and lucrative position. It was that dark hour in our annals,

> When Europe crouched to France's yoke,
> When Austria bent, and Prussia broke,
> And the firm Russian's purpose brave
> Was bartered by a timorous slave.

Nothing but the sternest sense of duty could have prevailed upon the Chief Justice to embark on such a stormy sea; and, fortunately, as these pages were going through the Press I have been enabled from an unexpected quarter to give, in Lord Ellenborough's own words, the motives which induced him to accept office.

In 1785 William Wilberforce had met him on the Continent, and the two had continued to maintain a friendly

intercourse. In February 1806, the great Emancipator, who was ever a plain speaker, had written to remonstrate with him on accepting a seat in the Cabinet, to which Lord Ellenborough returned what Wilberforce himself described as 'a very handsome answer.'

Bloomsbury Square: February 4, 1806.

Private Papers of William Wilberforce (1897), p. 125.

MY DEAR SIR,—I sit down to thank you for the favour of your letter in the very instant in which I have received it. I regret very much that I have no opportunity of personal communication with you on the subject of it; if I had I could explain more perfectly and unreservedly than I can do by letter[1] all the motives which have induced my reluctant acquiescence in a nomination of myself to a place in the Cabinet. The situation has not only not been sought by me, but I appeal to every member of the Government about to be formed who is acquainted with the transaction, whether it was not accepted by me with extreme reluctance, and after objections raised by myself which nothing but a superior sense of the present duty and a prospect of present usefulness to the public would have surmounted. If I had felt that a situation in the Cabinet would have placed me under circumstances inconsistent with the due and impartial discharge of my judicial functions, no consideration on earth would have induced me to accept it. A member of the Cabinet is only a member of a Select Committee of the Privy Council, of which Privy Council at large every justice of the K. B. is of course a member. In that larger Privy Council his Majesty may, and frequently does, take the opinion of its members on matters which may come in question judicially before some of them. But I think that no man can correctly act in both capacities, and therefore, when a question of a high criminal nature was about a year ago under discussion at a Privy Council at which I was particularly desired by the Chancellor to attend, I stipulated expressly with my Lord Chancellor that I should not be included in a Special Commission to try the offence then under consideration. I think both my Lord C.J. Holt, and very lately my Lord C.J. Eyre would have done better to have forborne being present at the preliminary inquiries before the Privy Council, the subjects of which in the result might be, and afterwards in fact were, tried before them; but the objection is not so much in my opinion that I might be led to participate in the counsels of

[1] Alluding almost certainly to the 'Delicate Investigation' into the conduct of the Princess of Wales.

the Executive Government upon questions connected with the criminal jurisdiction which I am to exercise elsewhere (because from these I should of course invariably withdraw myself), but because it might give a political cast and bias to a judicial mind, might generate views of ambition, and destroy that indifference and impartiality on all questions which is the proper characteristic of a British judge, and even if it had not that effect, it might be supposed by the world at large to produce it, which very opinion of others would detract much from the public credit and consequent usefulness of the person so circumstanced.

The consideration of this objection at first gave my mind no small degree of anxiety. I was conscious to myself that I had no views of ambition to gratify. Those views, if I had entertained any such, would have been better consulted by accepting the Great Seal, and with it a highly efficient place in the public Councils—but which I had already refused—indeed, every view of that kind has been long since more than satisfied. I lent myself at the earnest solicitation of others to the great public object of forming a strong and united Administration, which, perhaps, without my consent to accept this situation could not, from particular circumstances and difficulties which I am not at liberty to state, have been formed.

In accepting it I have stipulated that I should not be expected to attend except on particularly important occasions, and on such occasions some of my predecessors, and particularly Lord Mansfield, has, I understand, been called upon for his advice, and indeed, in virtue of my oath as Privy Councillor I am bound to give that advice when required.

Will you acquit me of vanity? I hope you will, when I give one reason more for my consenting to become for a time (I hope it will be a short one) an ostensible member of his Majesty's select and confidential Council. As I had, so I hoped I should be understood to have, no motive of ambition or interest inducing me to take this place in his Majesty's Councils. I had in general been supposed on most subjects to think for myself. I had, I believe, been considered in general as a zealous friend to the just prerogatives of the Crown. I had no particular stain upon my private character; in the miscellaneous composition of every Administration, and of this, amongst others, I thought a person such as I might be esteemed to be, and on the ground of that estimation particularly, would be an ingredient not wholly without its use.

So it appeared to some of my friends. So it did (I speak it

in confidence) particularly to Lord Sidmouth, as to the purity of whose views and conduct in the formation of the present arrangement I can bear the fullest testimony, and whose earnest request (I speak it still in the same confidence) overcame my reluctance, and induced me to make this sacrifice of private convenience, and to incur the hazard, which your kind and honourable letter represents to me as greater than I had thought it, of suffering in the good opinion of others. If, after this explanation, unavoidably less perfect than I could have wished to make it, you shall still retain your unfavourable opinion of the step I have taken, I shall learn it from you (and I am sure in that case you will have the frankness to tell me so) with inexpressible pain. As long as I shall continue a member of his Majesty's Councils (and I hope the necessity which induced my acceptance of the situation will not be of long continuance), I will give a faithful, honest, and fearless opinion upon the subjects under consideration; and although it is possible that good men may doubt of the prudence or propriety of my conduct in accepting it, I am confident that no good man who shall have the means of knowing the actual course I shall pursue in that situation will have reason to blame it. The explanation I have given you is entirely confidential. With an anxious wish consistently to perform all the various duties which press upon me at this moment, and to preserve the good opinion of good men, and especially of one whom on many accounts I have so long and so highly esteemed as yourself,

I remain, my dear sir,

Most sincerely and faithfully yours,

ELLENBOROUGH.

If the date thus given to Lord Ellenborough's career in the Cabinet had been a mere slip of the memory or of the pen, it would be unnecessary to dwell on it at such length, but on it are founded three pages of rhetoric, of which the following are specimens :—

'Autobiography,' vol. ii. p. 380.

This terrible combination of incompatible offices was for the first [1] time under Constitutional Government effected in the person of Lord Ellenborough. . . .

No other Chief Justice ever came hot foot from a Cabinet Council to decide the fate of an accused person politically obnoxious to the Cabinet, the trial going on from day to day so as to become open no less to Cabinet than to forensic discussion.

supra, p. 66.

[1] This is untrue, as I have already mentioned. Lord Mansfield sat in the Cabinet from 1757 to 1763 while holding the office of Lord Chief Justice.

The chance I had may be readily estimated with a Cabinet Minister for my Judge, and the Cabinet of which he was a Minister composed of Ministers to whom I had become deeply obnoxious by determined opposition to their measures. 'Autobiography,' vol. ii. p. 381.

The climax of absurdity perhaps is reached in the last extract which I give:—

After my subsequent expulsion from the House, which, as Lord Brougham rightly says, secured my re-election for Westminster, on its adverse note *hung the fate of the Ministry* . . . The question became thus one of Ministerial existence. Had the House, as it ought to have done, repudiated the anomaly of a Chief Justice holding a seat in the Cabinet, the retirement of Lord Ellenborough must have been indispensable and immediate. He could not have maintained his political office for an hour. In place of an individual member being heard in his own defence, the question really was the right of a Chief Justice to hold a seat in the Cabinet, or, in legal phrase, the issue was Lord Cochrane *versus* Lord Ellenborough, the Admiralty and the Cabinet. p. 382.

Such a farrago of nonsense compounded out of a schoolboy blunder scarcely demands serious comment. Possibly the writer had some vague recollections of the Debates in 1806 consequent upon Lord Ellenborough's inclusion in the Cabinet, and here even Lord Campbell would have saved him. These extracts, however, are remarkable as showing a desire to represent Lord Cochrane in the light of a victim of political persecution, for which theory I have been unable to find any confirmation. That he was not a *persona grata* at the Admiralty may perhaps be acknowledged, and is hardly to be wondered at, but, as we have seen, it did not prevent him from being employed in his profession wherever his services were deemed necessary. That Lord Melville, who was then the First Lord, would have lent himself to a foul act of oppression, carries absurdity on the face of it. We know that the Government refused to take up the prosecution. The Government of that day may not command universal sympathy now, but at least they were honourable English gentlemen. Living as we do in time of peace abroad and order at home, we may think some of their proceedings

against sedition and libel severe and ill-advised, but this was a case of prosecution for a common fraud, instituted by a body of individual citizens totally unconnected with the Government.

It would require overwhelming evidence, very different from that contained in the 'Autobiography of a Seaman,' to convince me that the Government interfered in the slightest way with the conduct of the case, or that its members, so far from rejoicing, were not filled with the most sincere sorrow at the disgrace attaching itself to the name of one of England's most brilliant seamen. And, it must be added, that Lord Cochrane strangely misconceived his own importance in the House of Commons.

Brilliant on the quarter-deck or in the breach, he was utterly ineffective as a politician; his own Radical allies looked upon his efforts on behalf of reform as ill-judged, and damaging to the cause they were intended to serve. He was far from being, like the elder Pitt, that 'terrible cornet of horse,' an object of apprehension and alarm to Ministers. Nor will the pages of Hansard be found to bear out his statement that he had given them more trouble than any other of his party 'because his knowledge of naval abuses and profligate expenditure enabled him to expose both.' The Whig opposition of that day, though weak in numbers, was not contemptible in ability or debating power, and a genuine and successful measure of naval reform, in which Lord Ellenborough had taken a conspicuous part, had been carried through the House of Commons before Lord Cochrane entered it.

vide *supra*, p. 21*n*.

Even if it had been desired to silence him, the moment was strangely chosen; he had not only shot his bolt in the House of Commons, but he was just about to betake himself to the North American Station, and employ in their legitimate sphere his brilliant abilities so misplaced at Westminster.

One more blunder remains to be exposed. At p. 391 the ill-treatment of Lord Cochrane is linked with that of the Princess Charlotte. The story is told of her flight from

Carlton House to her mother's residence in Connaught Place. And the Duke of Sussex is represented as inducing her to return by the argument 'that that was the very day appointed for the re-election of Lord Cochrane for Westminster, after the unjust sentence which had been passed upon him,' and that the two facts combined might lead to a popular outbreak and bloodshed. 'These considerations sensibly affected the Princess, who was moved to tears, and exclaimed, "Poor Lord Cochrane; I heard that he had been very ill-used by them (meaning her father's Ministers). Should it ever be in my power I will undo the wrong."'

'Autobiography,' vol. ii. p. 394.

Lord Brougham, who was present, absolutely denies that such words were ever used either by the Duke of Sussex or the Princess Charlotte.

'Life and Times of Lord Brougham,' vol. ii. p. 282.

In dealing with the 'Autobiography,' I have referred throughout to the original two-volume edition, which is still to be found in all libraries, and which obviously was the one consulted by Mr. Fortescue. In the condensed work edited by the present Lord Dundonald, a good many of the passages on which I have been compelled to comment are omitted. In the preface to the sequel, to be found between pages 431 and 433 of that edition, the Author says :—

> In order to keep the present work within a compact volume, I have ventured to omit from the 'Autobiography' such portions and many appendices which I thought might be spared without impairing the value of the book for general reading, as the earlier editions still remain for reference if required.

Had these omissions been made on the ground of inaccuracy, I could have greatly curtailed this chapter, but so long as the misstatements and insinuations of the earlier editions remain unwithdrawn, it is necessary to expose them; and apart from this, the one-volume edition contains some matter which cannot be passed over in silence.

In a note to p. 442, the present Peer has given the opinions of three most eminent personages—Lord Abinger (Sir James Scarlett), Sir Fitzroy Kelly, and Lord Erskine—

on the trial of his grandfather. That of Lord Abinger is contained in a letter of Lord Fortescue's, dated November 1st, 1860, in which the latter says, that to the opinions of Campbell and Brougham cited in the 'Autobiography' might be added that of the late Lord Abinger—

> Whom I myself heard declare, some years after he became Chief Justice (*sic*), at a dinner party at the late Sir George Philipp's, where the conversation happened to turn on your[1] trial, that having been one of your Counsel, and fully acquainted with all the facts of the case, he was satisfied of your innocence, and that he believed that it might have been established to the satisfaction of the jury if the Judge had not arbitrarily hurried on the defence at a late hour in the evening, when all parties were wearied with the fatigue of 12 hours' continuous sitting in Court, though he had been applied to for an adjournment until the next morning.

It would have been more to Lord Cochrane's benefit had Lord Abinger authorised this statement to be made at an earlier date, and in a place where it would have been of some use to his client, rather than over a dinner table years and years after the trial; and it would also have been interesting to have heard from the mouth of so consummate an advocate the way in which he would have proposed to get over the difficulties of the case. I have treated the question of the adjournment so fully that I need say nothing more on this head, except to contrast the version of Scarlett with that of Brougham. One illustration, however, I must give from personal recollection to show how dangerous it is to rely on conversational accounts of legal proceedings. Some years ago, at the table of a very eminent judge, now deceased, the trial of Lord Cochrane was referred to, and our host said that in his opinion Lord Ellenborough was highly to be censured for his conduct in forcing *Scarlett* to commence his speech at so late an hour, after he had appealed for an adjournment, saying, 'My Lord, I am physically unable to proceed.' Nothing

supra, pp. 308, 324.

[1] This letter was addressed to the tenth Earl, of whose death the writer was unaware. Lord Abinger never was Chief Justice either of the Queen's Bench or Common Pleas, but Chief Baron of the Exchequer.

could have been further from the intention of the narrator than to leave an incorrect impression on our minds, but it was clear that he had never read the trial, or else had hopelessly forgotten it. It is almost superfluous to point out that Scarlett never used these words or anything like them, that he never made any speech at all,[1] that he took no part in the application for an adjournment, which came exclusively from De Berenger's Counsel, and not from those of Lord Cochrane, and that the actual words of *Park*, who did make the application, were, 'I have undergone very great fatigue which I am able to bear.'

Then comes the testimony of Sir Fitzroy Kelly, afterwards Chief Baron of the Exchequer, contained in a letter of December 19th, 1860:—

> Five years after the trial of Lord Cochrane I began to study for the bar, and very soon became acquainted with and interested in his case. And I have thought of it much and long during more than forty years, and I am profoundly convinced that, had he been defended singly and separately from the other accused, or had he at the last moment, before judgment was pronounced, applied with competent legal advice and assistance for a new trial, he would have been unhesitatingly and honourably acquitted. We cannot blot out this dark page from our legal and judicial history.

Sir Fitzroy Kelly was an advocate of very great ability. His letter is dated previous to the communication made by Lord Cochrane's solicitors to the 'Law Review,' and so when he declared that Cochrane would have been acquitted, had he been defended separately, he could not have been aware, as we are, that the joint defence was resolved upon, after long and anxious deliberation, by the unanimous decision of Best, Topping, Scarlett, and Brougham, who must have been far better able to form an opinion of the merits of Lord Cochrane's case than the most brilliant genius who had never seen their brief. Sir Fitzroy starts with the assumption of Lord Cochrane's innocence; but

[1] As only one Counsel was allowed to address the jury on behalf of each respective group of defendants, Scarlett was not entitled to speak; and he was only the third 'string,' for Topping then led him at the Bar.

had he brought himself to entertain for a moment the alternative view, his professional experience would have told him that when the affairs of three defendants are inextricably entangled, it is often most dangerous to separate their defences lest they become mutually destructive.

Lastly, as to Lord Erskine; an extract is given from a letter of his addressed to Lord Cochrane at Rio de Janeiro, dated May 5th, 1823 :—

> No man has more sincerely rejoiced than myself at the prosperous results, both to yourself and to the world, which have followed from the disgraceful oppression and injustice over which your spirit and talents have enabled you so completely to triumph. I was so sorry at the time that my station at the bar had gone by when you suffered so much in the Courts.

The letter leaves it doubtful whether the 'oppression and injustice' referred to was the verdict of the jury, the conduct of the Judge, the sentence, the expulsion from Parliament, or all combined. Lord Erskine and Lord Ellenborough had been rivals at the bar, and colleagues in the Cabinet, and in the investigation into the charges against the Princess of Wales. It is difficult to believe that the ex-Lord Chancellor joined in the outcry against the Lord Chief Justice, and strange that he did not make his high station and great forensic reputation of more avail on Lord Cochrane's behalf. The slightest expression of opinion from him, in the months following the trial, would have been worth more to Lord Cochrane than any number of affidavits or pamphlets.

In contrast with the words of those eminent men, I venture to quote the remarks made as recently as 1889 by Lord Halsbury, the present Lord Chancellor, who had been one of the members of the Select Committee on the present Lord Dundonald's petition in 1877, and whose reputation as a criminal lawyer is equalled by few men now living, and surpassed by none; and it gathers weight from the fact of being delivered, not in a friendly letter, nor in talk over the dinner table, but in a speech in the House of Lords during a discussion on the proposed introduction of a Bill for the

establishment of a Court of Criminal Appeal. On the 15th August, 1889, the late Lord Fitzgerald, in moving the second reading of this measure, referred to the case of Lord Cochrane as an argument for the necessity of such a tribunal to correct miscarriages of justice;[1] and in his speech the Chancellor gave vent to the following expression of opinion:— Hansard, vol. ccclxxxix. p. 1299.

The account of the trial of Lord Cochrane, both what was proved and, what was more important to Lord Cochrane, what he did not prove, but what if innocent he should have proved, raises in my mind a very serious question, whether any Court of Appeal would have been able to reverse the verdict of the jury. No doubt it was a time of great political excitement, and I am not desirous of going into the matter so far as to raise questions the discussion of which might give pain to some who are still alive. I must, however, say this much, the noble and learned Lord must not assume that all enlightened, educated, and legal opinion concurs with him when he says that there is no doubt whatever that Lord Cochrane's innocence would have been conclusively established. p. 1305.

[1] Lord Fitzgerald quoted from the *Autobiography* in his speech, and it is not unfair to assume that his knowledge of the case was partially, if not entirely, derived from that work. But I must own I am baffled as to his authority for the following sentence (p. 1299 of his speech): 'After a not very long interval Lord Dundonald's innocence was fully established, not by the Home Secretary, but by independent inquiry.'

CHAPTER XIV

THE SELECT COMMITTEE OF 1877

In recounting the steps by which Lord Dundonald was gradually restored to rank and honours, I have purposely left unnoticed the claim which he made to receive the arrears of half-pay for the years (1814 to 1832) during which his name did not appear upon the Navy List. But his efforts to obtain them were continuous and untiring up to the day of his death.

Select Committee, Evidence, answer 51.

By an Admiralty minute, dated the 14th of January, 1848, it appears that Lord Dundonald had presented to the Admiralty Board a memorial asking for this as an act of justice consequent upon his restoration to the Service, and that the Admiralty recorded that they had no power to do more than refer his memorial to the Treasury. This was done by a letter of the 17th of January enclosing the memorial, and adding that—

Answer 51.

My Lords feel bound to state that they know of no precedent in the Naval Service for any similar restoration of half-pay. In the Army there is a precedent, the case of Sir Robert Wilson, who was also dismissed from the Service, but who claimed, and obtained, the arrears of his half-pay when restored to his former position in the Army upon the ground of 'signal services hitherto unrewarded.' If a similar plea be admitted in the present instance, my Lords can entertain little doubt as to the result of the present application, no man now alive having done more and few as much as Lord Dundonald to illustrate the Service to which he belongs.

Answer 51.

By a letter from the Treasury dated February 3rd, the Lords of the Admiralty were informed that they were mistaken in supposing that Sir Robert Wilson had obtained arrears of half-pay for any period previous to the date of his restora-

tion to the Service. 'It appears from your communication that Lord Dundonald has already received half-pay from the date of his restoration to his rank, and my Lords do not feel themselves justified in sanctioning the issue of half-pay to his Lordship for a period antecedent to that date.'

In 1856 Lord Dundonald wrote, in a private letter to Lord Palmerston: 'There yet remains, my dear Lord, a gracious and important act to perform, namely, to order my banner to be replaced in King Henry VII.'s chapel, and to direct the repayment of the fine[1] inflicted by the Court of King's Bench and the restoration of my half-pay suspended during my removal from the Naval Service.' To this there seems to have been a refusal, but the letter containing it has not been preserved.

Select Committee, Evidence, answer 40; and 'Life of Tenth Earl of Dundonald,' vol. ii. p. 357.

Select Committee, Evidence, answer 47.

[1] This request for the payment of the fine of 1,000*l.* inflicted in 1814 strengthens my doubts as to the story told in the continuation of the *Autobiography*, that it had been defrayed by public subscription, limited to one penny. It will be remembered that in 1816 Lord Cochrane, on his refusal to pay the fine of 100*l.* inflicted upon him for breaking out of prison, was again taken into custody, and that *this sum* was raised by a subscription among his constituents. The fact and his gift of the sum so collected to the Hone 'indemnification fund' has been already narrated, but in his speech on that occasion (December 29th, 1817) Lord Cochrane is entirely silent as to it having been collected in copper coins.

supra, p. 276.

The current version of this transaction is contained in the first volume of the continuation of the *Autobiography*, and the writers profess to give the words of Lord Cochrane himself, but, as they say 'the Guildford trial, its history, and issue may best be told in the words of an autobiographical fragment, written by Lord Dundonald shortly before his death,' I think it must be considered as subject to the criticisms contained in my last chapter; and I am the more confirmed in this and in my doubts, by the introduction on the scene of William Jackson. 'The subscription' (of the 100*l.* fine) 'having been completed in pence sent from all parts of the kingdom' (in his speech at the Hone meeting Lord Cochrane only says it was subscribed by *his constituents*), 'my secretary (Mr. Jackson) applied to the Master of the Crown Office to receive the amount of the fine in coppers. This was refused us, not being a legal tender. The Master, however' (who was the same official whom Lord Cochrane had abused so violently in the House of Commons for 'packing' the jury which tried him), 'in token of the suffering to which I had been so unworthily subjected, said that as payment of the fine in such a manner marked the sense of the people on my case, he would not oppose himself to the expression of public sentiment, but would take 10*l.* of it in coppers.' The story then relates how the subscription, like a modern 'snowball,' when once started, could not be checked until more than enough had been raised in this way to defray the original 1,000*l.* fine as well; the exact amount he could not remember; 'taking, however, the 1,100*l.* paid in pence, this alone showed that *two million six hundred and forty thousand*

'Life of the Tenth Earl of Dundonald,' vol. i. p. 101.

p. 104.

p. 105.

Smith v. Lord Cochrane. 'Times,' August 1, 1878.

By his will proved in 1861, the Earl of Dundonald bequeathed to his eldest grandson, the present Peer, 'all the monies due to me from the British Government for my important services, and also the amount due from the British Government of my back pay, of which I was injuriously deprived during my forced expulsion from the British Navy on prejudiced evidence which neither the Courts of Law, nor the House of Commons, would give me the opportunity of rebutting'; subject, however, to the payment to his 'friend and literary coadjutor,' George Butler Earp, of the amount of 10 per cent. on all sums of money so paid 'in testimony that to his literary exertions will be mainly owing any recovery of the said sums[1] due to me.'

Select Committee, Report, par. 16.

In 1864 his successor in the title applied for a reimbursement of the fine, and the payment of the half-pay, and for a pension. This application was refused on the 30th of July, 1864, in the following letter:—

par. 16.

I am commanded by my Lords Commissioners of the Admiralty to acquaint you, for the information of the Secretary of State for Home Affairs, that my Lords are of opinion there is not any new ground for re-opening the case as to the late Lord Dundonald's pay; that when King William the Fourth restored his lordship to his rank in the Navy, in the year 1832, he did not recommend these arrears to be paid; and further, that an application for the payment of the same was made in the year 1848 and refused by the Lords of the Treasury.

In 1873 the present Earl of Dundonald, then Lord Cochrane, attained his majority, and, as the person

persons, composing a very large portion of the adult population of the kingdom, sympathised with me.' This wonderful arithmetical calculation, by which the number of penny subscribers is multiplied by ten, remains uncorrected and even unnoticed by the late Earl and Mr. Fox Bourne; one more tribute to the care with which the *Life of Lord Dundonald* and the *Autobiography* were edited. The present Lord Dundonald has described it as a penny subscription from nearly half a million of persons.

Letter to 'Times,' 20th Aug. 1889.

I cannot believe that if the 1,000*l.* fine had been really defrayed by public subscription in 1816 Lord Dundonald would have asked for the repayment of it into his own pocket in 1856.

[1] This bequest of 10 per cent. applied also to any sums that might be recovered by Lord Dundonald's executors from the Brazilian, Chilian, and Peruvian Governments. A large sum was recovered, and on this Mr. Earp obtained his percentage.

immediately interested, took steps to procure the arrears of half-pay bequeathed to him by his grandfather's will. Accordingly, on the 29th of February, 1876, he presented to Her Majesty a Petition praying that she would be 'graciously pleased to order that compensation might be made to him, as the legatee of the late Earl of Dundonald, in respect of the loss of the pay and allowances of the late Earl as a naval officer in the Royal Service, for a period of eighteen years.' The Petition was commended to Her Majesty's consideration by a long list of signatures of Peers, Admirals, and other distinguished persons, the majority of whom had no doubt derived their sole knowledge of the trial from the story as told in the 'Autobiography.' The words in the following passage which I have printed in italics show what an erroneous view of this trial was presented to Her Majesty, and subsequently to the House of Commons:—

> Your Majesty's Petitioner does not desire to recall the incidents of the trial of Lord Dundonald, still less to scrutinise the evidence on which he was convicted, as if his defence were now to be made. The years which have elapsed have calmed the feelings of political partisanship, and not only by the expression of public opinion, but by the restoration of Lord Dundonald to his honours, it has been admitted that he was unjustly condemned for an act of which if others were guilty he was not. . . . *At his trial the prejudice of a great and eloquent Chief Justice was for some unknown cause excited against him, and thence, upon evidence now universally admitted to have been imperfect and insufficient, he was found guilty. A new trial was refused to him on the technical ground that the other persons charged with him, who had escaped and left the country, did not join in the application.*

The Petition was referred to the Treasury, and some correspondence passed, but by a letter, dated the 3rd of June, the request was finally refused on the ground that the recognition which the Petitioner sought had been long since accorded, and that the question raised in the Memorial narrowed itself down to one of precedent and the rules of the public service. The case of Sir Robert Wilson,

Select Committee, Report, par. 21.

to which Petitioner had referred, was pronounced not to be analogous, and it had been found that the question of allowing back pay to Lord Dundonald for the period during which he was out of the Service was fully considered in 1848 by the Government of the day, and was decided in the negative with special reference to the precedent of Sir Robert Wilson.

Lord Cochrane's friends were still persistent, and on the 10th of April in the following year (1877), Sir Robert Anstruther moved, and Mr. Spencer Walpole seconded, a motion that a Select Committee be appointed to inquire and report upon the Petition of Lord Cochrane to Her Majesty praying her to be graciously pleased to complete the gracious Act of Royal Justice which restored the late Lord Dundonald to his rank and honours. A debate followed, which turned principally upon the propriety of opening up the question after so long an interval, on the power of a Select Committee to recommend a money grant, and on the applicability of the precedent of Sir Robert Wilson. So far as the speeches dealt with the career and exploits of Lord Dundonald, his services to his country and the propriety of acknowledging them in a more ample manner than had hitherto been done, there is nothing to which any of the descendants of Lord Ellenborough care to take exception; but it is very different when the speakers, especially the mover and the seconder, come to touch upon the events of the trial, and I quote from their speeches, both as showing how imperfectly acquainted they were with the events which they professed to narrate, and as testifying to the mischief done by Lord Campbell's reckless and censurable piece of so-called biography.

Hansard, vol. ccxxiii., p. 857, *et seq.*

Sir R. Anstruther said, in moving his resolution, that it was a very delicate thing, even after a long interval, to bring a charge against a man whose reputation stood so high as that of Lord Ellenborough, but it could be shown that the mind of the then Lord Chief Justice of England was, to say the least of it, biassed against Lord Cochrane. That was the opinion entertained by the late Lord Campbell and other distinguished lawyers. And

the speaker proceeded to give a long quotation from that passage in the Lives of the Chief Justices which I have already criticised, and continuing in his own words, said that a new trial was moved for, but was refused; that Lord Ellenborough would not hear the motion, and that, speaking of the decision, Lord Campbell remarked that it was 'palpably contrary to the first principles of justice, and ought immediately to have been reversed.' That showed, he maintained, that the trial was conducted as against Lord Cochrane with a very strong bias adverse to him in the mind of the Judge.[1]

Mr. Walpole (who, as a Bencher of Lincoln's Inn, ought to have known better) said that: Since notice was given of this motion he had referred to the proceedings which took place at Guildhall on the occasion of the trial, and also to the proceedings which took place in Parliament with reference to that matter. The only conclusion which he could possibly draw from the study of these proceedings was that Lord Dundonald had not altogether been fairly treated at his trial; and that, in point of fact, it was in consequence of political rancour, or, as Lord Campbell calls it, 'political spite,' that justice had not been done to him on that occasion. It was clear from the proceedings that a great prejudice had been raised against him. As Lord Campbell said, special emphasis was laid on every suspicion which could be urged against him, and everything which could be urged in his favour was elaborately explained away. That was the opinion deliberately given by Lord Campbell, *after a long and careful review of the whole proceedings.* On the ground that the charge against him had been that of conspiracy, and that a new trial could not be granted in the absence of the other defendants, his application for that purpose was refused. On this point Lord Campbell had remarked that the refusal of a new trial under such circumstances was palpably contrary to the first principles of justice.

I have already dealt sufficiently with the inaccuracy of these representations, and pass on to the speech of

[1] If proof were wanted of the carelessness of Sir Robert Anstruther, or of his failure to adopt any independent investigation, it would be supplied by the fact that he quoted the story of the two million six hundred and forty thousand penny subscribers. Both Mr. Walpole and Mr. Lyon Playfair (now Lord Playfair), who supported the motion, introduced references to the *Autobiography of a Seaman* into their speeches (pp. 864, 877

the Chancellor of the Exchequer, Sir Stafford Northcote, who poured cold water very gently on the motion, pointing out the difficulties from a constitutional point of view, of carrying out the object of the petitioner by the appointment of a Committee, and showing that, if appointed, it would not be sufficiently authoritative for any other purpose than that of ascertaining facts which might be equally well put on record by the production of papers, which he offered to lay on the table. He paid a full tribute both to the memory of Lord Dundonald and to the motives which had induced the petitioner to take this step to vindicate the memory of his grandfather; but he urged that if anything was to be done in the matter, it must be on different grounds from those which had been urged. 'It might be a question whether it was possible for the Crown, by grace and favour, to propose any vote of money for the purpose of recognising an illustrious man. That was a different idea.' He also touched upon the attacks made on Lord Ellenborough's memory, as a reason against granting the Committee.

Then, if it was assumed that there had been misconduct on the part of Lord Ellenborough at the time and a failure of justice in consequence of transactions at the trial, there might be some feeling on the part of those interested, either in the memory of Lord Ellenborough or in any of those who were concerned in the trial, that their case also should be considered, and their answer to accusations such as those brought forward by the Hon. Bart. should be heard. I must confess I was sorry to hear the Hon. Bart. speak of the conduct of Lord Ellenborough in a way which seemed to me unnecessarily to prejudice the matter. This is a case in which there was a strong feeling, and everybody knows that charges were brought against Lord Ellenborough of a very grave character, for having politically perverted justice—charges which no one, looking calmly at the matter, will think were well founded. Whether under the circumstances Lord Dundonald had all the advantages which he ought to have had in the way of defending himself, and whether, if he had had them, the result would have been different, is quite another question. But when it is implied that there had been, if not conscious, at any rate serious misconduct on the part of

Lord Ellenborough, that is a point with which it would be extremely difficult for a Committee to deal, and upon which they could not arrive at a satisfactory conclusion.

Sir Stafford Northcote's views, however, did not commend themselves to the Proposer of the motion. On being put to a division it was carried, and on the 14th of May a Select Committee was nominated, consisting of the following fifteen members:— The Solicitor-General (Sir Hardinge Giffard, now Lord Chancellor), Mr. Walpole, Admiral Egerton, Mr. Whitbread, Mr. Russell Gurney (the Recorder of London), Mr. William Holms, Mr. Allsopp, Mr. Isaac Butt, Mr. Alfred Marten, Q.C. (now Sir Alfred Marten and a County Court Judge), Mr. Baxter, Mr. Sackville, Mr. Greene, Mr. O'Byrne, Mr. Tremayne, and Sir Robert Anstruther (Chairman).

The tone of Sir Robert Anstruther's speech had been such that the Hon. Henry Spencer Law, the eldest surviving son of the Lord Chief Justice, had written to remonstrate with him after the appointment of the Committee, and he had also sent a letter to Sir Stafford Northcote, who, in his reply, wrote, 'The Solicitor-General is already alive to the importance of doing justice or preventing injustice being done to the tribunal before which Lord Dundonald was originally tried and convicted.'

Mr. H. S. Law, then an old man, was a boy at school in 1814, and had never paid any particular attention to the details of the trial. Hearing, however, of the two articles in the 'Law Magazine' to which reference has so frequently been made in these pages, he reprinted them with a preface of his own, and sent copies to some of the members of both Houses of Parliament, and to the members of the Select Committee.

He had no wish to minimise or haggle over the importance of the services of Lord Cochrane afloat, and it was obviously impossible for him to have any opinion as to the value of the 'secret plans,' for which it is evident some payment was due. But he strongly objected to the grant of back pay, which he thought might have a retrospective effect on his father's memory.

Preface to reprint of Articles from Law Magazine, pp iv. v.

The Committee met seven times between the 17th of May and the 14th of July, on which latter date their Report was adopted, and on the 16th was ordered to be printed.

In considering the Petition, the Committee said they had not deemed it necessary to touch upon those portions of it which referred to the trial of the late Lord Dundonald, but they had confined their inquiry to the circumstances that had occurred since the trial took place. This being so, its proceedings will require very slight treatment at my hands; but I have to draw attention to a portion of the last section of the Report, which seems to be an effort to go beyond the limits so laid down.

Select Committee, Report, par. 3. par. 28.

In reviewing the whole case your Committee have to observe that under one Government in 1832 Lord Dundonald received the free pardon of the Crown, and was promoted to that place in the Navy which he would have held had he never been dismissed the Service. Under a subsequent Government, in 1847, he was restored to the honours which had been conferred on him previous to his expulsion. Under a third Government, in 1860, Lord Dundonald's banner as Knight of the Bath was restored to Henry VII.'s Chapel.

It appears to your Committee that these steps could not have been taken by responsible advisers of the Crown, who believed that Lord Dundonald was guilty of the crime of which, in 1814, *he was convicted, and the course pursued towards him amounts to nothing less than a public recognition by those Governments of his innocence.*

That in inserting the words the Committee were going outside the terms of the inquiry, and its scope as defined by the evidence received at it, may be gathered from the fact that these sentences were not contained in the original Draft Report as proposed by the Chairman, Sir Robert Anstruther, and were only carried on division by one vote, the minority consisting of the Solicitor-General, Mr. Russell Gurney, Mr. Allsopp, Mr. Alfred Marten, Mr. Sackville, and Mr. Tremayne. Furthermore, these same members, with the exception of Mr. Sackville, voted against the question, 'That this Report as amended be the Report of the Committee to the House.'

Select Committee, Proceedings, p. xiii.

The evidence taken before the Committee was short, and, for the most part, purely documentary and formal. With the exception of Mr. Branwell, a clerk to the War Office—who produced the papers relative to Sir Robert Wilson's case, and to an earlier one, that of a Major Bristowe, who had been restored to the Service after deprivation for an alleged breach of the Foreign Enlistment Act—the only witness examined was the Petitioner himself, and he was taken steadily through his grandfather's career and efforts at restoration from the date of his being struck off the list of Captains in the Royal Navy. *He was not asked a single question relative to the trial itself, and Lord Ellenborough's name was not even mentioned in the evidence taken before the Committee.* A great part of his evidence has been incorporated in a former chapter, but there were other questions connected with Lord Cochrane's services abroad and his pecuniary claims on Foreign Governments on which I do not touch. In giving his evidence the Petitioner produced to the Committee both the 'Review of the Case of Lord Cochrane,' published in 1830, and the 'Observations on Naval Affairs,' published in 1847. He also adopted and made use of several authorities contained in the 'Autobiography of a Seaman,' and its continuation by the eleventh Earl of Dundonald.

In their Report as finally adopted, the Committee summarised the evidence produced before them, prefacing it with the statement that *in considering the Petition they had not deemed it necessary to touch upon those portions of it which referred to the trial of Lord Cochrane, but they had confined their inquiry to the circumstances that had occurred since that trial took place*, and adding that 'Lord Cochrane invariably asserted in the most positive terms his absolute and entire innocence of the charges brought against him.' They set out the facts relative to the cases of Sir Robert Wilson and Major Bristowe, without, however, drawing any inference of their applicability to the case of Lord Cochrane. The twentieth paragraph contained a statement relative to Lord Cochrane's secret plan for the utilisation of an 'invention of his own, by which he believed

Select Committee, Report, par. 3.

par. 5.

that powers of a nature so destructive as to be practically irresistible could be employed in war'; and the report of a secret committee of officers who, in 1847, investigated this invention, was quoted as follows:—'We feel that great credit is due to Lord Dundonald for the right feeling which prompted him not to disclose his secret plans when serving in war as a naval Commander-in-Chief of the forces of other nations, and under many trying circumstances, in the conviction that these plans might eventually be of the highest importance to his own country.'[1]

Select Committee, Report, par. 20.

Lastly, the Committee quoted the refusal of back pay made by the Treasury in their letter of June, 1876, given above, and concluded their Report as follows:—

supra, p. 371.

Your Committee have arrived at the conclusion that the objects described in this letter can scarcely be said to be carried

Select Committee, Report, par. 22.

[1] The various Committees who investigated these plans never saw their way to adopting them, and up to the end of his life the secret remained, and still remains, undivulged except in sealed papers lying at the Admiralty. It was in connection with the possible employment of this plan against the Americans in 1814 that Lord Cochrane says he would have been willing to employ De Berenger, who was a skilled pyrotechnist, and who lays claim to having himself invented a new form of combustible for use in war.

'Observations on Naval Affairs,' p. 144.

See *Noble Stock-Jobber*, Appendix, p. 42, where, in a list of his inventions, De Berenger gives the following: 'A curious accoutrement for light troops (containing most furious combustibles), which, not exceeding one pound and a-half in weight, is to enable a private soldier to set on fire or to blow up successively a number of baggage or ammunition waggons, should he be able to approach them, as often occurs, within 400 or 500 yards. The action is easy, certain, and rapid: the fire can only be extinguished by one article, which is scarce thought of, and even then with much difficulty.' There is an earlier allusion to it in the pamphlet published previous to the trial, entitled *Antidote to Detraction and Prejudice*,' at p. 79 of which De Berenger is represented as saying: 'I can prove that I relied on my going on actual service, for I not only prepared my equipment, but I laboured incessantly to complete an invention, which I intended vigorously to employ against the Americans, and which, visionary as it may appear to those who are not convinced as I am, enables a common light infantry soldier (with an apparatus of only one pound and a-half weight additional to his present appointments) to set fire to and blow up any ammunition or baggage waggons, etc., he may fall in with, at a distance from 400 to 500 yards, while the same invention on an increased scale will qualify any naval officer to burn the rigging and sails of an enemy's vessel at 800 to 1,000 yards distance.' This seems something like a revival of the old Greek fire, of which an interesting account will be found in Colonel Conder's 'Latin Kingdom of Jerusalem,' p. 212, and which is believed by many to have been manufactured from the mineral oils at Baku.

out, while the claim that Lord Dundonald has bequeathed to his grandson is not recognised. All the proceedings connected with his restoration to the Naval Service and to his rank and honours proceeded upon the principle that, as far as possible, he should be placed in the same position as if he had never been removed from the Service. This appears of necessity to imply that the 'reparation' spoken of in the Treasury Minute is not complete; and, in the opinion of your Committee, no technical rule should be permitted to stand in the way of a 'reparation,' the justice of which seems to follow by a natural inference from the steps that have already been taken.

Then follow the paragraphs I have quoted at p. 376, and which were only inserted by a majority of one vote, and the Committee go on to say:—

par. 23. It should further be borne in mind that the exceptionally brilliant services of Lord Dundonald as a naval officer would, but for his dismissal, probably have earned for him a far more ample and adequate reward than any which he received for his services rendered to the British Crown.

Your Committee have arrived at the conclusion that this is a case peculiarly exceptional in its character, and deserving Her Majesty's most gracious and favourable consideration.

The Report was acted upon, and in the following year the Supplementary Estimates contained a grant of 5,000*l.* to Lord Cochrane 'in respect of the distinguished services of his grandfather, the late Earl of Dundonald.' This sum was stated, whether correctly or not I do not know, to be almost exactly equivalent to the arrears of half-pay without interest,[1] and the grant was also said by the cotemporary Press to be made in this form to avoid creating a precedent. It seems to me, on the other hand, more probable that the grant was made in this form expressly to avoid conceding the contention of the old Lord Dundonald that the arrears of pay were a 'right consequent to his unjust deprivation.' To have yielded to this would have been to throw a slur upon the Government of 1814, upon Lord Ellenborough, and upon all concerned in the trial; but a grant in consider-

[1] Lord Cochrane, in *Observations on Naval Affairs*, 1847, puts his arrears of half-pay at 4,000*l.*

ation of distinguished services was a totally different matter, it could carry no such construction, and was not made in a form which any of Lord Ellenborough's family could object to. Several newspapers of the day complained that the grant was not made otherwise, and that the 'concession was not more gracious in form,' but there was a general chorus of approval of the fact that Lord Dundonald's services had at last met with some pecuniary recognition.

'Pall Mall.' 'Daily News.'

It may be doubted whether the public would have been equally satisfied had they known that within a few days of the grant being voted, Mr. Earp's representatives had claimed a tenth of it under the bequest in Lord Dundonald's will, and that the Court of Chancery had ordered 500*l.* to be paid into Court to await their decision as to how far this claim was justified. Neither the Committee in drafting their Report,[1] nor the House of Commons in voting the money, could have intended that a percentage of it was to go in payment for the composition of the 'Autobiography of a Seaman,' but after hearing the case argued, Vice-Chancellor Malins held that the claim of Mr. Earp's representatives was incontestable, and the 500*l.* was duly paid out to them.

Smith *v.* Lord Cochrane, 'Times,' Aug. 1, 1878.

It has been necessary to deal at this length with the proceedings of the Select Committee of 1877, because they have often been made a subject of misconstruction, and the pecuniary grant in respect of the distinguished services of the Earl of Dundonald has been construed not merely into a declaration of his innocence, but into a confirmation of the story that he was unfairly dealt with by the Judge who tried him; and this line has been taken by the present Earl in his letters that appeared in the 'Times' of August and September 1889.

It is most essential to show how strictly the investigations of the Committee were limited to the inquiry into circumstances that had occurred since the trial, and to emphasise the fact that the alleged public recognition of his innocence was deduced, not from any fresh evidence taken

[1] Mr. Earp's name does not appear to have been mentioned before them.

before the Committee, but from inferences drawn from the conduct of previous Governments.

If the Report of the Committee, and the consequent grant of public money, are understood to be thus strictly limited, no member of Lord Ellenborough's family could have the smallest objection to them, any more than they have objected in the past to any of the previous acts of grace by which Lord Dundonald's services were recognised. But so long as any attempt is made to twist them into a condemnation of the conduct of the Lord Chief Justice at the trial, or a confirmation of the charges against him which the House of Commons so contemptuously dismissed in 1816, they regard it as their solemn duty to protest against any such unwarrantable assumption.

It is the perpetual reiteration of these attacks on the memory of Lord Ellenborough which forms the sole, but, I trust, the sufficient, justification for this book. It is with very great reluctance that the descendants of Lord Ellenborough have revived the details of a story which, for the sake of Lord Dundonald's descendants, they would willingly have left in oblivion; but so long as the 'Lives of the Chief Justices' stand unamended, so long as the misstatements in the 'Autobiography of a Seaman' and its sequels are not acknowledged and disavowed, they have no other course. I have little expectation that this book will be read beyond the limited circle of those who are interested in its subject, but in one thing it cannot fail, and that is to supply to the future historian the means of deciding whether the administration of justice in England in the year before the battle of Waterloo had sunk to the level of the Bloody Assize.

For this is really what Lord Campbell and the autobiographers of a Seaman, and Mr. Henty, and those who recklessly follow their statements, charged Lord Ellenborough with. They may soften it down and call it 'political rancour'—though to do Mr. Henty justice he goes in boldly for the comparison to Jeffreys—but their accusations can only mean one thing, and that is, that the Chief Justice of the King's Bench deliberately strained the forms of law, perverted the evidence, and refused common

'With Cochrane the Dauntless' (1896).

justice, in order to obtain the conviction of a political opponent. Stated thus baldly, and taken in connection with the merest outline of the facts, they carry their own refutation, but so stated they do not exhaust the baseness of the conduct which is imputed to Lord Ellenborough. It would have been bad enough if an English judge had been charged in some time of great public danger and excitement with straining the law against some political offender who had striven to overturn the constitution. But this was the case of a private prosecution for a conspiracy to obtain money, in which no question of politics or of danger to the State was involved, and in which six at least out of the eight prisoners were utterly obscure people; in order to obtain the conviction of one 'splendid delinquent' Lord Ellenborough is supposed to have prejudiced the trial of all his associates.

If I have succeeded in showing how utterly destitute of foundation is the popular version of Lord Cochrane's trial, my task will be accomplished. That the conclusions I have come to will be adopted by all my readers I am not so foolish as to suppose for a moment; there must be some who will take a very different view to mine. Whatever their judgment may be I cannot complain of it, if only it is derived from what was actually said and done, and not from those garbled and perverted narratives that I have had to expose in previous chapters.

I have not striven to represent Lord Ellenborough as a monster of perfection, as that ideal judge, unswayed by personal feeling, unaffected by human weakness, whom we may hope to see in the Millennium, but not before. He stands out to my mind as a strong, rough, imperious man, of unstained honour, loathing fraud and meanness, caring nothing for Ministers, or Cabinets, or mobs, but resolved to administer justice and nothing but justice in the high station to which he was called. The generation that knew him, the Counsel that practised before him, could estimate at their true value the charges of corruption, oppression, and partiality. Nearly eighty years have elapsed since his death, no adequate biography of him has

ever been published, and the slow, steady drip of calumny threatens to wear away the rough-hewn stone in which his memory is enshrined. To some it may seem a superfluous task to clear away the web of myth and misrepresentation which has grown round his conduct at the trial of Lord Cochrane; those who have the best right to cherish his memory, and who are deeply wounded every time these false accusations are revived, have thought otherwise. They shrink from no fair criticism on their ancestor, but they most justly resent the reckless and ignorant repetition of unfounded stories coming from a tainted source. Hitherto the means of refuting them has had to be dug out of pamphlets and newspapers, out of magazines and reviews; they are now, for the first time, placed before the public in a connected and coherent form.

In so doing, the descendants of Lord Ellenborough hope that they have not only discharged a duty imposed on them by ties of blood, but have wiped away a reproach from the administration of English justice, and that in clearing the memory of one of the most eminent of English judges from charges as damaging as they are unfounded, they have contributed, however humbly, in perpetuating that regard for the integrity and impartiality of the Judicial Bench which is the keystone of our prosperity and freedom.

APPENDIX A.

Mr. JOSEPH FEARN, *sworn.*

Examined by Mr. Gurney.

Q. You are a stock broker?—*A.* I am.

Q. How long have you known Mr. Butt?—*A.* Several years.

Q. Were you introduced by him to Mr. Cochrane Johnstone and to Lord Cochrane?—*A.* Yes.

Q. In the month of February last, were you employed either by Mr. Butt or Lord Cochrane, or Mr. Cochrane Johnstone, to make any purchases for them in the funds?—*A.* Yes, I was.

Q. At that time where was your office of business?—*A.* No. 10 Cornhill.

Q. Was it No. 10 or No. 86 about the 12th of February?—*A.* I believe it was No. 86.

Q. Had Mr. Butt an office?—*A.* He had somewhere about that time an office in Sweeting's Alley.

Q. From the 12th of February to the 19th of February did you see Mr. Butt daily?—*A.* I think I did.

Q. At your office or at his?—*A.* Both.

Q. Did you generally see him alone, or in company with either of the other persons?—*A.* Frequently all three together.

Q. You mean Mr. Cochrane Johnstone, Lord Cochrane, and Mr. Butt?—*A.* Yes.

Q. When you did business for Lord Cochrane, did you in all instances take orders from him or from any person for him?—*A.* Sometimes from him, and sometimes from Mr. Butt.

Q. After you had acted for him upon the orders of Mr. Butt, did he recognise those orders?—*A.* Always.

Q. From the 12th till the 19th, did you make various purchases and sales for them?—*A.* I did.

Q. On the evening of the 19th, what balance had he in his hand; Lord Cochrane's transactions I believe were only in Omnium?—*A.* No.

Q. The amount was £139,000, was it not?—*A.* Yes.

Q. That is to say, that he had that balance of Omnium?—*A.* Yes.

Q. What balance of Omnium had Mr. Cochrane Johnstone on that day?—*A.* £120,000.

Q. One hundred and twenty or one hundred and thirty thousand?—*A.* I have not drawn out the balance here.

Q. What was Mr. Cochrane Johnstone's Consol account on that day?—*A.* £100,000.

Q. How much had Mr. Butt of Omnium at the same time?—*A.* I think about £160,000.

Q. Is not the Omnium £130,000?—*A.* I should think more than that; I believe it was £154,000.

Q. How much his Consols?—*A.* £168,000.

Q. On the morning of the 21st of February did you sell them all?—*A.* I did.

Q. Omnium and Consols and all?—*A.* Yes.

Q. On the morning of Monday the 21st, did you remove to any other office than that you had before occupied?—*A.* Yes, I did.

Q. Where was that office?—*A.* No. 5 in Shorter's Court.

Q. Is that close to the side door of the Stock Exchange?—*A.* Yes, it is.

Q. How many rooms were there?—*A.* Three.

Q. Had you one?—*A.* I had one and a small closet; Mr. Butt had another upstairs with Mr. Johnstone and my Lord Cochrane, and the ground floor was occupied by Mr. Lance.

Q. Was he a clerk of yours, or employed by them?—*A.* He was employed by them.

Q. Had you taken that office or had it been taken for you?—*A.* Mr. Johnstone had taken his with one room or two rooms, I am not sure which.

Q. Had the office been taken for you, or had you yourself gone and taken it?—*A.* They had taken those two rooms, I believe, without intending to take any more; but as I was not pleasantly situated, and was rather too far from business, I wished to have an office there, if they could procure it; several of my friends went to look at it, and finding it convenient, I requested them to take the whole of it, if they could, in order that I might be accommodated.

Lord Ellenborough: Whom do you mean by friends? Mr. Cochrane Johnstone?—*A.* No, other persons for whom I did business.

Mr. Gurney: When was this done?—*A.* In the course of the week preceding.

Lord Ellenborough: When you say Mr. Cochrane Johnstone took a room for you, do you mean at this place?—*A.* They had taken those two rooms, I believe, for themselves, without reference to my having anything to do there.

Mr. Gurney: Did they afterwards take a third?—*A.* They afterwards took the whole that is in my possession.

Q. You have all of them in your possession now?—*A.* I have.

Q. On the morning of Monday the 21st of February, how soon did you see either of those gentlemen?—*A.* They were in the habit of being at the office as early as I myself attended.

Q. At your office in Cornhill?—*A.* Yes.

Q. How early did you see them at your office that morning?—*A.* I believe at about ten, or a little past.

Q. Whom did you see?—*A.* I think Mr. Butt and Mr. Johnstone.

Q. Are you positive upon that subject?—*A.* I am sure they were both there in the course of the morning.

Q. Are you positive whether anybody else was with them?—*A.* No, I think nobody else.

Q. Business begins in the Stock Exchange I believe at ten o'clock?—*A.* Yes.

Q. At what price had Consols for time left off on Saturday?—*A.* I can hardly say.

Q. Did they open on Monday morning pretty much as they had left off on Saturday evening?—*A.* I think they did.

Q. How soon after you had been in the Stock Exchange did any good news come?—*A.* I think it was near eleven.

Q. What news had arrived?—*A.* I cannot take upon me to say; I only knew in general, with perhaps everybody in the house in business, that there was some news, but we rarely inquire into particulars of news; it is enough that facts are produced.

Q. You were doing a good deal of business at that moment, and must have heard something of it; did you hear anything about a messenger arriving at Dover?—*A.* I have heard so much since that I cannot take upon myself to swear what I heard, whether that a messenger had arrived at Dover, or that Bonaparte was killed, but one of the two certainly.

Q. Did you hear that Bonaparte was killed?—*A.* Yes.

A Juryman: Were those gentlemen with you at the time the news arrived?—*A.* They were—not my Lord Cochrane.

Mr. Gurney: Had the good news an immediate effect upon the funds?—*A.* Yes, it had.

Q. After the funds had begun to rise did you sell?—*A.* I began to sell before the rise took place.

Q. What was the first price you sold at?—*A.* Omnium at twenty-nine and a quarter.

Q. That was the first price you sold at?—*A.* Yes.

Q. Do you mean to say that Omnium opened that morning at twenty-nine and a quarter?—*A.* I rather think it did.

Q. However, the first price you sold at was twenty-nine and a quarter?—*A.* Yes.

Q. What was your next price?—*A.* At 29⅜, 29½, and 30½.

Q. At what did you sell the Consols?—*A.* Beginning at 70⅝, 71¼, 71⅞, 72, and 72¼.

Q. In what manner did you receive instructions for these various sales; they were sold in different parcels?—*A.* Yes, I came frequently to my office from the Stock Exchange to Mr. Butt and Mr. Cochrane Johnstone.

Q. And you reported to them and received orders?—*A.* Yes.

Q. Did you receive notes likewise?—*A.* I was in the constant habit of doing so.

Q. Did you do so that morning?—*A.* I am not quite certain; but I am in the constant habit of receiving notes from them.

Q. Do you remember hearing in the course of the morning of a post-chaise coming through the city?—*A.* I did.

Q. Did that occasion a still further rise in the funds?—*A.* I do not know.

Q. Before business left off the funds fell again?—*A.* They did.

Lord Ellenborough: About what o'clock did the funds fall?—*A.* I believe about two.

Mr. Gurney: It was discovered at that time that the good news was not true?—*A.* It certainly was not believed.

Q. Have you an account of the different purchases from the 12th to the 21st, taken from your books?—*A.* I have.

The Witness delivered in the Accounts.

Mr. Serjeant Best: From what are those taken?—*A.* From my books.

Mr. Gurney: Have you carried those accounts down to the 5th of March?—*A.* I have.

Q. Has Mr. Baily also had access to your books to take the different balances?—*A.* He has.

Mr. Gurney: The reading of this would not be very intelligible, a sight of it perhaps would be the best thing.

Lord Ellenborough: We must have the sum total or the results.

Mr. Gurney: I will give your Lordship the result after the examination of several stock brokers; Mr. Baily has abstracted the whole.

Mr. Serjeant Best: I shall carry back the accounts considerably earlier; that should be understood. If I put in accounts of an earlier date, it must not be considered that I am giving evidence in so doing.

Mr. Gurney: I take it the same, as if my learned friend cross-examined Mr. Fearn upon that subject.

Cross-examined by Mr. Serjeant Best.

Q. You have spoken of these gentlemen engaging in stock transactions; you have been carried back no further than February the 8th; they had all three of them bought to an enormous amount long before that time—had they not?—*A.* Certainly.

Q. And as to sales, had they not sold very large sums, long antecedent to the month of February?—*A.* Oh, yes.

Q. Can you state as to my Lord Cochrane, for instance—had he not sold hundreds of thousands before that time?—*A.* Yes.

Q. I would ask you, did he not from time to time down to that time, continue to be selling large sums?—*A.* Yes.

Q. With respect to Mr. Cochrane Johnstone—on the 10th or 11th of February, had he not a balance of 100,000*l*?

Mr. Gurney: To save my learned friend time, my account shows every day's purchases and every day's sales from that time.

Mr. Serjeant Best: Be so good as to look at that printed paper, and tell me whether that is not a correct statement of Mr. Cochrane Johnstone's account with you?—*A.* I cannot tell from this book.

Mr. Gurney: I believe the accounts will agree to a farthing, from the time they each begin.

Mr. Serjeant Best: Then the larger sales will appear upon this paper without troubling his Lordship to take them down upon his notes: there were very large sales for all of them several days precedent to the 21st?—*A.* Yes, there were.

Q. I believe they began these speculations as early as the month of November, did they not?—*A.* Yes.

Q. Mr. Butt managed principally — very much for these gentlemen—for Lord Cochrane particularly?—*A.* Yes, he did.

Q. Lord Cochrane, you have told us, was not there on the morning of the 21st?—*A.* No, he was not.

Q. For a great many days, I believe I may say months, had you not been directed to sell their stock whenever it should so rise that you could get one per cent.?—*A.* Yes.

Q. You have told us that on the morning of the 21st you began to sell before the news came?—*A.* Yes.

A Juryman: He said before the rise took place.

Mr. Serjeant Best: You found when you came there in the morning that the stocks had got to such a pitch as that you could sell consistently with the orders they had given you?—*A.* It was so.

Lord Ellenborough: At what hour was that?—*A.* Ten o'clock.

Mr. Serjeant Best: Did you not sell out very large sums before either of them came near the place that morning?—*A.* I think I had begun to sell before they came, but I cannot say positively.

Q. Had you not sold to a considerable amount, if you can tax your memory with it, or refresh your memory by looking at any book?—*A.* I think I had.

Q. Can you tell us to what amount you had sold before any of them came? I do not ask to a few shillings, we deal in thousands here.—*A.* I cannot possibly say—I had done much before I saw either of them, for I was in the habit of doing twenty or thirty and reporting to them.

Q. Do you mean thousands?—*A.* Yes.

Q. You think you had sold considerably before you saw them?—*A.* I think I had.

Lord Ellenborough: Cannot you fix the time of your sale?

Mr. Gurney: I shall prove the prices every half-hour.

Mr. Serjeant Best: I am not at all conversant in those things, never having speculated in stock at all, but I am told it is the practice sometimes to sell stock which the persons have not to transfer?—*A.* I have heard of such things.

Q. Consequently, if I had been at the Stock Exchange that morning, and had found the Omnium up at 84, which I believe it was that morning——

Mr. Bolland: No, 82.

Mr. Serjeant Best: If I had been at the Stock Exchange that

morning, and had found the Omnium up at 82, and had known that the good news must soon turn out to be all invention, I might have sold, if I had liked, a million of stock, according to the practice of the Stock Exchange, though I did not happen to have a sixpence?—*A.* It certainly might have been done.

Q. Is it not the practice for a man who wishes to gamble in the funds, to sell the stock which he has not, when he thinks they will fall?—*A.* I know it is done.

Q. A man who thinks the stocks may fall, may sell stock he has not, to any person who thinks they may rise?—*A.* It certainly is done.

Q. Did either my Lord Cochrane, Mr. Cochrane Johnstone, or Mr. Butt make any such sales on that day to your knowledge, you having stated you were their broker—do you know of their having sold on that day any stock which they had not purchased before?

Lord Ellenborough: Are you not putting this gentleman in a situation of peril?

Mr. Serjeant Best: If he admits it.

Lord Ellenborough: Why should you place him in such a situation to deny or affirm? This does not affect the charge.

Mr. Serjeant Best: I ask whether it was done by those persons.

Lord Ellenborough: But that would be done through a broker.

Mr. Taddy: If your Lordship will allow me to suggest, on behalf of the witness, that in an action for the penalties, the question would be whether he knew they were possessed of the stock, or not, and this would go to make out his knowledge.[1]

Mr. Serjeant Best: Do you know whether either of those persons on that day sold any stock or Omnium, which they had not purchased before?

Lord Ellenborough: That question must be limited to anything in which you have not had participation in the way of sale, otherwise you may criminate yourself—having given you that caution, you may do as you please.—*A.* They did not.

Lord Ellenborough: That is not imputed to them.

Mr. Serjeant Best: The use I mean to make of it I have no objection to state now.

Lord Ellenborough: No, you need not; I leave it entirely to your judgment.

[1] Mr. Taddy was apparently holding a watching Brief on behalf of the Stock brokers.

Mr. Serjeant Best: I think you told us before, those gentlemen told you, whenever the stock rose to one per cent. above what they had bought at, to sell?—*A.* Yes, they did.

Q. With respect to the taking of this office, when did you first see it?—*A.* In the course of the week anterior to the 21st of February.

Q. Mr. Butt had before an office in Sweeting's Alley.—*A.* Yes.

Q. He found that an inconvenient one, and he took these rooms in Shorter's Court, he and Mr. Johnstone?—*A.* Yes.

Q. Those were taken for Mr. Butt, were they not?—*A.* I believe so.

Q. I believe you went to the rooms as to the rooms of Mr. Butt?—*A.* I did.

Q. I believe you thought, upon seeing Mr. Butt's room, that the situation was a very convenient one for yourself?—*A.* Yes.

Q. And therefore you suggested, did you not, that you should like a room in the same house?—*A.* I think I did.

Q. In consequence of this suggestion, did not Mr. Butt give up to you the room he had taken for himself, and take another in the same house for himself?—*A.* Yes, he did.

Q. And the room being taken in this manner, you put up your name "Fearn, Stock Broker."—*A.* On the Monday.

Q. Did you do that at your own idea, or was it suggested to you by anybody?—*A.* It was the same transparent blind I had at my former office, which I removed and put in the window.

Q. Your name in gold letters?—*A.* In black letters.

Q. You took your furniture?—*A.* The rooms were furnished.

Q. I believe after thus finding your customers liked the situation, you desired Mr. Johnstone to purchase the lease of the house for you?—*A.* Yes, I did.

Q. Was that before or after the 21st?—*A.* I think after.

Lord Ellenborough: Then that does not apply.

Mr. Serjeant Best: You had taken it before the 21st and got into possession on the 21st?—*A.* Yes.

Q. One of your reasons for taking it was that some of your customers were particularly pleased with it?—*A.* Yes.

Q. That was on the Thursday in the week before?—*A.* I believe it might be.

Q. You have told us you did not see Lord Cochrane on that morning; how many days previously to that had you seen him?—*A.* I think I saw him on the Saturday.

Q. You are not quite certain of that?—*A.* No, I am not.

Q. Does it appear whether he bought anything on that day?

Mr. Gurney: It appears from the account that he bought 20,000 and sold 17,000.

Mr. Serjeant Best: You have told us that all those three persons, Mr. Cochrane Johnstone, Lord Cochrane, and Mr. Butt, were very large speculators; did they always speculate the same way, or on the contrary—when one bought did not the other very often sell?—*A.* It has been the case.

Q. Has not that happened often, several times?—*A.* Yes, it has, several times.

Re-examined by Mr. Gurney.

Q. On that day they all sold?—*A.* Yes, they did

Q. They all acted together on that day?—*A.* Yes, they did.

Q. Where did Lord Cochrane reside on the 21st of February?—*A.* I do not know.

Q. How soon after did you know his residence in Green Street?—*A.* Not at all until the printed paper of the Stock Exchange came out.

Q. Did you know that Lord Cochrane resided at the time in Green Street?—*A.* Only by report.

Q. Not from Lord Cochrane?—*A.* No.

A Juryman: You say they did not sell any stock but what they had before purchased; do you mean such as they had bought and paid for, or only such as they had contracted for the purchase of—was it actually bought and transferred to them?

Mr. Taddy: That is the very thing I have taken the liberty of suggesting to your Lordship.

Lord Ellenborough: He has before said they had not sold any of which they had not become the proprietors before, so that he is predicating of them that they had purchased this, for they could not otherwise become proprietors.

A Juryman: Is it not a purchase for time altogether? are they not all time bargains, both the Omnium and the stock?—*A.* This is one of those questions I cannot answer.

Lord Ellenborough: Gentlemen, he objects to answering the questions as it may criminate him, but the offence charged may have an effect upon the funds, in which not only these individuals are concerned, but every person who has transactions in stock, the persons belonging to the Court of Chancery, who have to purchase or sell, may be influenced by an improper elevation or

depression of the funds, that does not affect the question as to the crime charged upon this record; you will consider, Mr. Gurney, whether you will persist in the questions, because this man demurs to the answering the questions, being a party in the transaction.

Mr. Gurney: You do decline answering that question?—*A.* Yes, I do.

Mr. Robert Hichens, *sworn.*

Examined by Mr. Gurney.

Q. I believe you are a stock broker?—*A.* Yes, I am.

Q. Have you for some years past known Mr. Cochrane Johnstone?—*A.* Yes.

Q. I believe you have not done business for him till the present year?—*A.* No.

Q. From the 8th of February to the 19th did you make various purchases for him?—*A.* Yes, I did.

Q. At the leaving off of the business on Saturday what was the balance?—*A.* 250,000*l.*

Q. That was all Omnium?—*A.* Yes, it was.

Q. Have you taken from your books a statement of the business you did?—*A.* I have memorandums that will enable me to answer any questions.

Q. Has Mr. Baily from your books taken an account of purchases and sales?—*A.* I furnished Mr. Baily with a copy of it.

Mr. Gurney: Then through Mr. Baily I will give all the particulars of it.

Lord Ellenborough: Whether purchased with money or no, they take upon themselves the disposition of that fund, showing that they had an interest in the rise and fall of the funds, and that they sold on the Monday and gained a profit.

Mr. Gurney: Yes, my Lord. On Monday morning, the 21st, how soon did you see Mr. Cochrane Johnstone?—*A.* I think between ten and eleven; I cannot say exactly.

Q. Where did you see him?—*A.* I think I met him as I was coming out of the Stock Exchange.

Q. How near ten or eleven?—*A.* I think it must have been about a quarter before eleven, but I cannot say positively.

Q. Did you receive any directions from him as to what you were to do with respect to the Omnium?—*A.* I received an order from him on the Saturday to sell 50,000*l.* at one per cent. profit, and that I had sold before I saw him.

Q. At what had you sold it?—*A.* At 29.

Q. Did he give you any further instructions what to do with the remainder?—*A.* He then ordered me to sell a certain quantity at an eighth per cent. more.

Q. In short, did you sell the whole of it that day by his directions?—*A.* I did.

Q. At what prices?—*A.* At 29, 29⅛, 29¼, 30⅜, and 30⅞.

Lord Ellenborough: At those different prices did you dispose of the whole which Mr. Cochrane Johnstone held on the 21st?—*A.* Yes.

Q. At one or other of those prices?—*A.* Yes.

Cross-examined by Mr. Topping.

Q. Can you tell me what was Mr. Cochrane Johnstone's balance on the 15th?—*A.* I think 465,000*l.*

Q. On the 16th how much was that reduced?—*A.* On the 16th I sold 200,000*l.*

Q. Reducing the balance of course to 265,000*l.*?—*A.* Yes.

Q. Upon the 17th what did you sell?—*A.* On the 17th I bought 50,000*l.*, and sold 115,000*l.*, reducing the balance to 200,000*l.*; on that Saturday I bought 50,000*l.*

Q. And you had had his directions upon that Saturday to sell at one per cent.?—*A.* To sell 50,000*l.* at one per cent. profit.

Q. And you had done that before you saw Mr. Cochrane Johnstone at all?—*A.* Yes, I had.

Mr. William Smallbone, *sworn.*

Examined by Mr. Gurney.

Q. You are a stock broker, I believe?—*A.* Yes.

Q. Did you shortly before the 21st of February make any purchases for Mr. Cochrane Johnstone?—*A.* Yes.

Q. You had made two purchases only, I believe, the 12th and the 14th?—*A.* Yes, only two purchases of 20,000*l.* each.

Q. When did you sell them out?—On the 21st of February.

Q. At what did you sell them out?—*A.* 28⅜, 29¼, 29, and 29½.

Q. By whose order did you sell them out?—*A.* I sold Mr. Johnstone's by his order; I sold Mr. Butt's by his order.

Q. Was that order from Mr. Cochrane Johnstone received on the Monday or before the Monday?—*A.* In part it was received on the Monday, but a part on the Saturday.

Q. You had also, I believe, made purchases in Omnium for Mr. Butt?—*A.* I had.

Q. To the amount of 40,000*l.* I believe?—*A.* Yes.

Q. Was that 40,000*l.* left as a balance on Saturday the 19th?—*A.* Yes.

Q. And all sold out on the Monday?—*A.* Yes, all sold on the 21st.

Q. Have you given Mr. Baily a statement from your books of that?—*A.* Yes.

Q. And of the prices at which it was sold?—*A.* Yes.

Lord Ellenborough: Now what is the result of all these accounts?

Mr. Gurney: I am going to call one person more, and then I will give your Lordship the totals.

Q. You had bought for Mr. Cochrane Johnstone 40,000*l.*, and on that 21st you sold it all?—*A.* Yes.

Q. You had bought for Mr. Butt 40,000*l.*, and on the Monday you sold it all?—*A.* I sold it all on Monday.

Lord Ellenborough: If he sells all the sum is immaterial; if you prove that he sold all of the several amounts, it furnishes a constructive motive for what has passed.

Cross-examined by Mr. Scarlett.

Q. When was it you had purchased the 40,000*l.* for Mr. Cochrane Johnstone?—*A.* On the 12th and the 14th.

Q. Did Mr. Johnstone send you the order to purchase it?—*A.* Yes.

Q. Was it upon his own account?—*A.* No, it was not upon his own account; the order was from him.

Q. But not upon his own account?—*A.* No, it was not.

Q. Was the whole 40,000*l.* purchased at two different times?—*A.* Yes, it was.

Q. You stated to my learned friend that he gave you an order to sell a part of it on Saturday?—*A.* Yes, he gave me an order on Saturday.

Q. What was it?—*A.* To sell at a quarter profit if I had an opportunity.

Q. I take for granted that opportunity did not occur on the Saturday?—*A.* No, it did not.

Q. Otherwise you would have sold it on the Saturday?—*A.* Certainly.

Q. On the Monday you say he gave you an order as to the other 200,000*l.*?—*A.* Yes.

Q. Had you sold the first 20,000*l.* before you saw him on the Monday?—*A.* Yes, I had.

Q. At what time in the morning had you sold it?—*A.* I think about half-past ten.

Q. When did you first see Mr. Johnstone?—*A.* I saw him soon after I had sold out, between ten and eleven.

Q. His order had been confined to 20,000*l.* on the Saturday?—*A.* Not exactly to 20,000*l.*; if I saw an opportunity of selling any at a quarter profit I was to sell.

Q. When you saw him on the Monday, did he then order you to sell the remainder?—*A.* Yes.

Q. Did you sell it immediately?—*A.* As soon as an opportunity offered to sell it at a profit.

Q. Was that early in the day?—*A.* Yes, about eleven I believe.

Q. When was it that you first heard any rumour of good news in the morning?—*A.* Soon after the market opened, between ten and eleven.

Q. You say you had purchased 40,000*l.* for Mr. Butt?—*A.* Yes.

Q. When was that?—*A.* The 12th, 14th, and 18th of February.

Q. Different sums on those days?—*A.* Yes.

Q. Had you any order from Mr. Butt as to the sales?—*A.* To sell whenever I saw an opportunity of selling at a quarter profit, or three-eighths, as the circumstances might allow.

Q. How long have you known Mr. Butt?—*A.* About six months.

Q. Had you had any transactions with him before in that way?—*A.* Yes.

Q. He had occasionally employed you?—*A.* Yes, he had.

Q. Who introduced you to Mr. Johnstone?—*A.* Mr. Johnstone was in Mr. Butt's office when I first saw him there in Sweeting's Alley.

Q. It was through Mr. Butt you became acquainted with Mr. Johnstone?—*A.* Yes, it was.

Q. If any person had known that this news was false, and had been disposed to be a bear, he might have made his fortune by selling that day, might not he?—*A.* Certainly.

Q. By selling for account?—*A.* Certainly.

Q. You had no directions from either of those gentlemen to sell more than they had bought that day?—*A.* No, I had not.

Cross-examined by Mr. Richardson.

Q. You stated to my learned friend that you had bought large quantities of Omnium on account of this gentleman; had any of it been paid for?—*A.* Shall I answer that question, my Lord?

Lord Ellenborough: If the witness looks at me I must tell him he need not answer any question that implicates him in a crime.

Mr. Richardson: You decline answering that question?—*A.* Yes, I do.

Q. You will decline answering any other questions that you think implicate yourself. Were any of those purchases real purchases for stock transferred, or on account?—*A.* It was for Omnium—that cannot be transferred.

Q. You spoke of Consols?—*A.* No, this was Omnium.

Q. Was it all bought or paid for, or on account?—*A.* I decline answering that question.

Q. With respect to the Consols, had any of them been paid for or transferred?—*A.* I had no Consol account.

Mr. Richardson: I will state to your Lordship the object I have in that; I submit it is incumbent upon the prosecutors to prove in support of the allegations of their indictment, which charge a conspiracy for the purpose of enabling Mr. Cochrane Johnstone and the other gentlemen to sell divers large sums of Government securities, and so on, that they had an interest in those Government securities.

Lord Ellenborough: That applies only to the first two counts.

Mr. Gurney: If I leave my case imperfect, my learned friends will take advantage of it.

Lord Ellenborough: It does not apply to the third count, certainly there is a particularity which is quite unnecessary in the others; it states that by certain devices and contrivances they endeavoured to raise the price of the funds, to the prejudice of His Majesty's subjects, to an undue elevation, and so on; there is enough to let in the general evidence.

Mr. Gurney: And there is enough in the first count, independently of the sales.

Mr. Richardson: The first count states this to be to enable these gentlemen to sell Omnium and Three per Cent. Consols at larger prices than they would otherwise have sold for; I submit to

your Lordship that in support of that it is for the prosecutors to show that they had such to sell.

Lord Ellenborough: That will be an observation at the close if they leave their proof imperfect; perhaps I accede to you, but that would only apply to one count, they have six more counts. I do not say that they are all safe counts, but you will see what they propose taking their verdict upon.

Mr. Malcolm Richardson, *sworn*.

Examined by Mr. Gurney.

Q. I believe you are a bookseller and also act as a stock broker?—*A.* I am.

Q. You are not a member of the Stock Exchange?—*A.* No, I am not.

Q. In the afternoon of Saturday, the 19th of February, did Mr. Butt make any application to you on the subject of stock?—*A.* On the morning of that day.

Q. What did he apply to you to do?—*A.* He applied to me to purchase a quantity of Omnium.

Q. How much did he mention?—*A.* He mentioned on the first instance as much as 150,000*l.*

Q. What answer did you give to that?—*A.* I hesitated to execute such a commission as that to that extent.

Q. How much did you purchase for him?—*A.* 20,000*l.*

Q. On that Saturday?—*A.* Yes, in the morning I speak of.

Q. What did you do with that 20,000*l.*?—*A.* I received instructions to sell it again if I could get a quarter per cent. profit.

Q. Did you get a profit and sell it again?—*A.* In a short time I did get three-eighths per cent. profit, and consequently sold it again without waiting for instructions.

Q. Did you then by his instructions make any further purchase for him?—*A.* I did in the latter part of that day purchase first 20,000*l.* and then 10,000*l.*

Q. On the morning of Monday, the 21st, did you sell out that 30,000*l.*?—*A.* I did.

Q. In pursuance of instructions received on the Saturday or on the Monday?—*A.* On the Saturday, at the time I saw him.

Q. At what profit did you sell?—*A.* At three-fourths per cent. profit.

Q. What was the price?—*A.* 28¼.

Q. Have you given the account of this to Mr. Baily?—*A.* Yes, I have.

Cross-examined by Mr. Brougham.

Q. You were partner with Mr. Fearn, senior, Mr. Butt's broker, were not you?—*A.* Yes, formerly I was.

Q. Did you not apply to Mr. Butt, stating that you had a wife and family, and wishing him to give you some employment?—*A.* Mr. Butt had been known to me ten or twelve years, and known to Mr. Fearn, senior, only as being one of my customers in the book line.

Q. Did you not apply to Mr. Butt yourself to ask him to serve you?—*A.* Not upon this occasion at all.

Q. Will you hear the question first, and then answer it. Did you never before this apply to Mr. Butt to give you some of his business?—*A.* Yes, I did.

Q. And he did give you some of his business upon this day?—*A.* He did.

Cross-examined by Mr. Richardson.

Q. Was any of the Omnium bought for Mr. Butt paid for?—*A.* I would rather decline answering that.

Mr. Francis Baily *called again.*

Examined by Mr. Gurney.

Q. These gentlemen have informed us that they have furnished you with the exact statements of all the purchases and sales; have you drawn out from their statements the purchases and sales, and the daily balances of each?—*A.* I have. It may be necessary to state Mr. Richardson has not furnished me with a written account, but I have taken it down now from his own mouth.

Q. Have you from that made out a general statement of the several accounts containing the daily purchases, the daily sales, and the daily balances?—*A.* I have.

Q. For Mr. Cochrane Johnstone, Lord Cochrane, and Mr. Butt?—*A.* Yes.

The account was delivered in and read as follows:—

General Statement of A. Cochrane Johnstone's Omnium Account, from 8th to 21st Feb. 1814

	through Fearn			through Hichens			through Smallbone			TOTALS		
	Daily Purchases	Daily Sales	Daily Balances	Daily Purchases	Daily Sales	Daily Balances	Daily Purchases	Daily Sales	Daily Balances	Daily Purchases	Daily Sales	Daily Balances
1814, Feb. 8	10,000	—	10,000	—	—	—	—	—	—	10,000	—	10,000
9	47,000	10,000	47,000	20,000	—	20,000	—	—	—	67,000	10,000	67,000
10	78,000	105,000	20,000	150,000	—	170,000	—	—	—	228,000	105,000	190,000
11	115,000	35,000	100,000	95,000	—	265,000	—	—	—	210,000	35,000	365,000
12	—	—	100,000	—	—	265,000	20,000	—	20,000	20,000	—	385,000
14	96,500	100,000	96,500	200,000	—	465,000	20,000	—	40,000	316,500	100,000	601,500
15	13,500	—	110,000	—	—	465,000	—	—	40,000	13,500	—	615,000
16	18,500	10,000	118,500	—	200,000	265,000	—	—	40,000	18,500	210,000	423,500
17	11,000	19,500	110,000	50,000	115,000	200,000	—	—	40,000	61,000	134,500	350,000
18	38,000	—	148,000	50,000	—	250,000	—	—	40,000	88,000	—	438,000
19	—	18,000	130,000	—	—	250,000	—	—	40,000	—	18,000	420,000
21	—	120,000	10,000	—	250,000	—	—	40,000	—	—	410,000	10,000

Consol Account, from 12th to 21st Feb. 1814

through Fearn		
Daily Purchases	Daily Sales	Daily Balances
—	—	—
—	—	—
—	—	—
—	—	—
100,000	—	100,000
—	—	100,000
—	—	100,000
—	—	100,000
—	—	100,000
—	—	100,000
—	—	—

Omnium Account, from 14th to 21st Feb. 1814

through Fearn		
Daily Purchases	Daily Sales	Daily Balances
—	—	—
—	—	—
—	—	—
—	—	—
—	—	—
100,000	—	100,000
—	—	100,000
50,000	—	150,000
—	50,000	100,000
36,000	—	136,000
20,000	17,000	139,000
—	139,000	—

General Statement of R. G. Butt's Omnium Account, from 8th to 21st Feb. 1814

	through Fearn			through Richardson			through Smallbone			TOTALS		
	Daily Purchases	Daily Sales	Daily Balances	Daily Purchases	Daily Sales	Daily Balances	Daily Purchases	Daily Sales	Daily Balances	Daily Purchases	Daily Sales	Daily Balances
Feb. 8	10,000		10,000	—	—	—	—	—	—	10,000	—	10,000
9	50,000	10,000	50,000	—	—	—	—	—	—	50,000	10,000	50,000
10	78,000	110,000	18,000	—	—	—	—	—	—	78,000	110,000	18,000
11	115,000	33,000	100,000	—	—	—	—	—	—	115,000	33,000	100,000
12	—	—	100,000	—	—	—	20,000	—	20,000	20,000	—	120,000
14	96,500	100,000	96,500	—	—	—	10,000	—	30,000	106,500	100,000	126,500
15	13,500	—	110,000	—	—	—	—	—	30,000	13,500	—	140,000
16	18,500	10,000	118,500	—	—	—	—	—	30,000	18,500	10,000	148,500
17	11,000	19,500	110,000	—	—	—	—	—	30,000	11,000	19,500	140,000
18	38,000	—	148,000	—	—	—	10,000	—	40,000	48,000	—	188,000
19	—	18,000	130,000	50,000	20,000	30,000	—	—	40,000	50,000	38,000	200,000
21	—	154,000	24,000 Sold too much	—	30,000	—	—	40,000	—	—	—	24,000 Sold too much

R. G. Butt's Consol Account, from 11th to 21st Feb. 1814

through Fearn		
Daily Purchases	Daily Sales	Daily Balances
—	—	—
—	—	—
—	—	—
46,000	20,000	26,000
87,000	—	113,000
—	—	113,000
55,000	—	168,000
40,000	—	208,000
—	—	208,000
—	—	208,000
—	30,000	178,000
—	168,000	10,000

D D

Q. What appears at last to be the gross balance held by each of them on the 19th February; what is Mr. Cochrane Johnstone's balance of Omnium from all those different accounts on the 19th February?—*A.* 420,000*l.*

Q. Now state Mr. Cochrane Johnstone's Consol account?—*A.* 100,000*l.*

Q. What was the balance of Lord Cochrane's Omnium account?—*A.* 139,000*l.*

Q. Now state Mr. Butt's?—*A.* 200,000*l.*

Q. And it appears, I see, that there were 24,000*l.* sold too much on the Monday?—*A.* Exactly so; there was that quantity sold more than he had purchased.

Q. What was Mr. Butt's Consol account?—*A.* 178,000*l.*, and he sold only 168,000*l.*

Lord Ellenborough: Then there was 24,000*l.* too much of his Omnium and 10,000*l.* too little of his Consols sold?

Mr. Gurney: Exactly so. Now what was the gross amount of their account of balances on that day?—*A.* 759,000*l.* Omnium and 278,000*l.* Consols.

Q. As we are not so well acquainted with Omnium as you are, if that were reduced to Consols what would they have amounted to?—*A.* It may be necessary to state that every thousand pounds Omnium consists of 1,100*l.* Reduced and 670*l.* Consols, therefore the whole amount of that would be 1,611,430*l.* Three per Cents.

Q. Now upon that amount what would the fraction of a single eighth per cent. be?—*A.* 2,014*l.* 5*s.* 9*d.*

Lord Ellenborough: The whole of this fund was cleared on the 21st, except 10,000*l.* Consols, and it was oversold by 24,000*l.* Omnium?—*A.* Exactly so.

Mr. Gurney: Have you calculated, from the accounts, the profits made by those sales of the 21st?—*A.* I have.

Q. To what does it amount?—*A.* Exactly 10,450*l.*

Q. That is the total of the three. Can you give me the proportion of each?—*A.* For Lord Cochrane, 2,470*l.*; Mr. Cochrane Johnstone, 4,931*l.* 5*s.*; Mr. Butt, 3,048*l.* 15*s.*

Q. From the state of the market on the morning of the 21st, if no news had arrived such as raised the funds on that day, could any persons have sold this large quantity of Omnium and Consols without very much depressing the market?—*A.* I should think not certainly.

Q. Do you remember at what price Omnium left off on Saturday, the 19th?—*A.* I have referred back to the books; I cannot state from my own memory.

Q. Have you the books here?—*A.* No; they are the books of the Stock Exchange.

Q. Mr. Wetenall's accounts?—*A.* Yes.

Q. How soon after the business at the Stock Exchange began on the morning of the 21st did the news arrive there?—*A.* I should think in about half an hour after, but I really am not quite certain to that point.

Lord Ellenborough: The business begins at ten, I believe?—*A.* Yes.

Mr. Gurney: As soon as the news came, had it a sensible effect on the funds?—*A.* Yes; a gradual effect, according as the report was believed.

Q. Do you remember after some time whether there was any check or decline?—*A.* Yes; there was about the middle of the day.

Q. I mean the first decline?—*A.* Yes; afterwards they recovered.

Q. To what was that recovery owing?—*A.* It was generally attributed to the news that came through the city.

Q. You mean the chaise coming through the city?—*A.* Yes; it was generally believed it was a confirmation of the former report.

Q. Did that second rise which took place upon the chaise going through the city extend still higher than it had been on the report of the arrival of the messenger?—*A.* I think it did.

Cross-examined by Mr. Park.

Q. You are not under the same restraint as the other persons are, can you tell us whether these were real transactions, or only fictitious ones which daily take place at the Stock Exchange?—*A.* The accounts which were given in I think were given in for time, but I have only taken out the figures.

Lord Ellenborough: I should imagine the witness would say that from the magnitude of the accounts he would think they were for time?—*A.* Certainly.

Mr. Park: I want to know, for I have never had Omnium in my life, whether you are not competent to say from your knowledge of these accounts that these are all what they call time bargains?—*A.* There is nothing stated upon the face of these accounts as to what days the purchases are made for; possibly they may be for time.

Q. I ask you whether from your knowledge of these accounts

and the investigations you have made, they are not time bargains?

Lord Ellenborough: He has no personal knowledge of them, he can know nothing but from the magnitude of the sum; he may suppose they must have been time bargains.—*A.* Certainly; there is nothing upon the face of the accounts to lead to any such conclusion.

Mr. JAMES WETENALL, *sworn.*

Examined by Mr. Gurney.

Q. I believe you are employed by the house to take the prices of the day at the Stock Exchange?—*A.* I am.

Q. At what price did Omnium leave off on Saturday, the 19th of February?

The Witness referred to a paper.

Mr. Serjeant Best: Where do you get those accounts from?—*A.* I collect them from the Stock Exchange.

Mr. Gurney: Do you go about all day long taking the prices?—*A.* I collect them at different times in the course of the day.

Q. You go about taking an account from all the persons who are there?—*A.* I take them from different persons who are in the market.

Mr. Serjeant Best: This is a printed paper?—*A.* Yes.

Mr. Gurney: It is printed under your directions, I believe?—*A.* Yes.

Q. Is your original paper destroyed?—*A.* It is.

Q. Is this paper a copy from that of yours?—*A.* Yes.

Mr. Serjeant Best: Did you ever compare this with the paper on which you took down the prices?—*A.* Yes.

Q. Where do you get the contents of your written paper?—*A.* From the gentlemen in the Stock Exchange.

Mr. Serjeant Best: I submit that this paper cannot be evidence. The witness states that he collects from the gentlemen in the Stock Exchange the prices at which they buy and sell, from time to time, in the course of the day; he says he compares this printed paper with the original written paper; I am not objecting to that, but I submit, the written paper itself could not be evidence.

Lord Ellenborough: It is all hearsay, but it is the only evidence we can have; it is the only evidence we have of the price

of sales of any description. I do not receive it as the precise thing, but as what is in the ordinary transactions of mankind received as proper information, and I suppose there is hardly a gentleman living who would not act on this paper.

Mr. Gurney: At what price did Omnium leave off on Saturday, the 19th of February?—*A.* 26¾.

Lord Ellenborough: Do you furnish the Bank with these papers?—*A.* Yes.

Mr. Gurney: Was that 26¾ the money price or the time price?—*A.* The money price.

Q. The time price, I believe, is about one per cent. higher?—*A.* In general.

Q. At what price did Omnium commence on the Monday following?—*A.* 26½.

Q. That is the money price?—*A.* The money price.

Q. Therefore the time price was 27½?—*A.* I did not take the time price.

Q. After this news arrived what did it get up to?—*A.* As high as 30¼.

Q. At what time was that?—*A.* That is impossible for me to say.

Q. How soon did it get up to 30¼?—*A.* I cannot say; it did rise to that by degrees.

Q. Did it stand at that, or rise or fall?—*A.* It fell by degrees to 30, and from that to 28.

Lord Ellenborough: So that the rumour had a continuing effect to the close of the day?—*A.* Yes.

Mr. Gurney: Did it fall back so low by one and a-half as it began in the morning?—*A.* No.

Cross-examined by Mr. Serjeant Pell.

Q. Do you remember at what time in the course of the day the report came to the Stock Exchange of a chaise coming through the city?—*A.* I cannot say at what time it was.

Q. Then perhaps you cannot tell whether or not the stocks rose again upon any report of that kind arriving there?—*A.* According to my recollection the stocks rose a second time; they rose at first, then they fell, and then they rose again.

Q. But you cannot tell at what time that was, or to what cause it was attributable?—*A.* It was attributable to a chaise arriving.

Q. You remember that?—*A.* Yes.

Q. See whether you cannot remember how long it was after

the opening of the business of the day that they so rose; might it be three hours afterwards?—*A.* It was in less than three hours, I think.

Q. It was in less than three hours that they rose the second time, you mean?—*A.* Yes; the second time.

Q. Have you a distinct recollection of this. Though you cannot remember the precise point of time at which it took place, have you a distinct recollection that they rose at first, then fell, and then rose again?—*A.* Yes: I have a perfect recollection of that, but I cannot tell the time.

Cross-examined by Mr. Park.

Q. How often in the course of the day do you take that account?—*A.* Not at any particular stated times.

Q. You have nothing to do with buying or selling stock, I presume?—*A.* Not on my own account.

Q. But you are a stock broker?—*A.* I am.

Q. Then when you are not otherwise employed, you fill up that paper from time to time?—*A.* No; if I perceive there are any particular fluctuations, I then make it my business to collect the prices.

Q. Do you mean to represent that the stocks had not risen from what they ended at on Saturday before any news came to the Stock Exchange; had not they risen considerably that morning?—*A.* I think not, because, if I recollect, there were reports in the morning that news had arrived.

Q. We have heard from some gentlemen that they sold stock as soon as the Stock Exchange opened; now I ask whether stock had not been sold at a rise before the news arrived?—*A.* Yes.

Mr. Gurney: But you say before the market opened there were some reports of a messenger having arrived?—*A.* Yes.

Mr. Charles Addis, *sworn.*

Examined by Mr. Gurney.

Q. Have you a house in Shorter's Court?—*A.* No, I have not; I am concerned for a gentleman who has some property there.

Q. You have the letting of a house for a gentleman there?—*A.* I have.

Q. Was any application made to you in the week prior to

the 21st of February for any part of that house?—*A.* Yes, on the 15th or 16th, I think Mr. Cochrane Johnstone applied to me for an office in a house, the letting of which was under my management.

Q. What number in Shorter's Court did he finally fix upon?—*A.* It is number 5, the house almost immediately adjoining the Stock Exchange.

Q. Did he on that day take any part of the house of you?—*A.* He took one room for an office in that house on that day.

Q. The house in which Mr. Fearn is now?—*A.* Yes.

Q. How soon did he take any more?—*A.* He called on the following day and engaged another office.

Q. That was the 16th, then?—*A.* I believe it was the 16th, I will not be positive; and he called on the following day the 17th, being the third time.

Q. Did he, when he called on the 17th, write that letter in your office (*handing it to the Witness*)?—*A.* This is a letter he left in my absence in the office, on which day I cannot say, but this was a letter that he left for me.

Q. That was on the third day after he had engaged the three offices?—*A.* Yes.

Q. He had then engaged all three?—*A.* Yes.

Q. Are they three rooms in the same house?—*A.* Three rooms in the same house.

Q. (*To Mr. Fearn*) Is that letter Mr. Cochrane Johnstone's handwriting? (*handing it to the Witness*)—*A.* I believe it is.

It was delivered in, and read as follows:—

'Sir,—I called again upon you to know if you have powers to sell the house, part of which I have taken, as I find there are several persons in the house at present, which is rather awkward, and makes it too public.

'If you have powers to sell I will immediately treat with you; have the goodness, therefore, to leave the terms with your clerk, or send them to me at No. 18 Great Cumberland Street. I will, however, call again this day before I return to the West End of the town.

'I am, Sir,

'Your obedient Servant,

'(Signed) A. Cochrane Johnstone.'

(*Addressed*) *Mr. Addis.*

Cross-examined by Mr. Serjeant Best.

Q. I believe he took the first room for Mr. Butt expressly?—*A.* Yes; and gave me a reference to him at Mr. Fearn's, who then lived in Cornhill.

Q. And the next time he came he said he wanted it for Mr. Fearn?—*A.* No; he said then he wanted it for Mr. Butt.

Q. And the third time he said he wanted it for Mr. Fearn?—*A.* Yes.

Q. Mr. Fearn has now the whole?—*A.* Yes.

Mr. JAMES PILLINER, *sworn.*

Examined by Mr. Gurney.

Q. Are you a stock broker?—Yes.

Q. Prior to the 21st of February had you made any purchases for the defendant Holloway in stock or Omnium?—*A.* I had, in both.

Q. How much of either was he possessed of before business began on Monday, the 21st of February?—*A.* 20,000*l.* Omnium and 20,000*l.* Consols.

Q. Did you sell that out on that Monday?—*A.* I sold 20,000*l.* Omnium and 14,000*l.* Consols.

Mr. Serjeant Pell: Does your Lordship think, in consequence of what you have suggested already, that the witness is bound to answer to the nature of the stock?

Lord Ellenborough: I am not apprised whether it is a real sum or not at present.

Mr. Serjeant Pell: The reason I now interpose is, that if this should turn out to be a transaction which was not real, the witness would not be bound to answer any question respecting it, because it may tend to criminate himself and involve him in penalties. The mere circumstance of his having sold stock at all that day, supposing it not real stock, would warrant him in declining to answer these questions.

Lord Ellenborough: Whether he sold anything is a link in the chain, or else you might exclude all the transactions of the day, because they might ultimately connect with the vicious sale.

Mr. Serjeant Pell: Suppose it should turn out to be a time bargain, these questions would be material to convict this person of an offence, the amount sold would be very material; therefore, if he is not bound to answer the last question——

Lord Ellenborough: I do not prohibit him; I am only to tell him that if these are bargains which are against law, he is bound to know the law, and if it would involve him in any penalty, he need not answer the question.

Mr. Serjeant Pell: All I would request, then, is, that your Lordship would now suggest to the witness that he need not answer any question that will tend to criminate himself.

Lord Ellenborough: If it will convict you in penalties, you are not bound to answer any question.

Mr. Serjeant Pell: I was only taking the liberty to suggest that that admonition may be given in the early part of the examination.

Lord Ellenborough: I cannot tell a witness he is not bound to answer a question until I see that it has some bearing and probable tendency to accuse him; otherwise I must rummage all the statute-books for penalties to put the witnesses on their guard—I must not only carry all the penal laws in my head, but mention them to every witness who comes before me upon any subject.

Mr. Gurney: Did you see Mr. Holloway on the morning of the 21st?—*A.* Yes, I did.

Q. Did he give you any directions?—*A.* I beg to decline answering that question.

Mr. Gurney: I submit to your Lordship he is not at liberty to decline answering that question.

Lord Ellenborough: You may answer that question. Did he give you any directions?—*A.* He did.

Mr. Gurney: What to do?—*A.* I must beg to decline answering that question.

Lord Ellenborough: You need not answer to what you did; but you must state what he proposed to you to do, unless you did it afterwards, and the having done it would involve you in a penalty.

Mr. Gurney: What did he give you directions to do?—*A.* To sell stock.

Q. Was it to sell all he had, or part of what he had?—*A.* To sell all.

Q. At what time on Monday was it?—*A.* About the middle of the day.

Cross-examined by Mr. Serjeant Pell.

Q. What is Mr. Holloway?—*A.* A wine merchant.

Q. Where does he live?—*A.* In Martin's Lane, Cannon Street.

Q. Have you known him any time?—*A.* I have known him upwards of twenty years.

Q. How long have you acted for him as his broker?—*A.* Perhaps two years.

Mr. JAMES STEERS, *sworn.*

Examined by Mr. Gurney.

Q. Are you stock broker to the Accountant-General of the Court of Chancery?—*A.* I am.

Q. Did you, as broker to the Accountant-General, make purchases on Monday, the 21st February?—*A.* I did.

Q. At what prices?—*A.* I made purchases to the amount of 15,957*l.* 10*s.* 8*d.*, at 71⅛ per cent.

Q. Consols, I suppose?—*A.* Yes, I have got them down in various sums.

Q. Was that the high price of the day, or the price at which stock opened in the morning?—*A.* I got to my office, I think, about eleven o'clock, or a little before. I took the orders from the Accountant-General's office.

Q. At what time did you begin making your purchases?—*A.* I think from eleven to a quarter after eleven.

Q. Had the news then considerably raised the stocks?—*A.* It had.

Lord Ellenborough: Is that all you did that day?—*A.* That is all I did that day.

Mr. Gurney: Did you do business for anybody besides the Accountant-General on that day?—*A.* I cannot speak to anything but what I did for the Accountant-General.

Lord Ellenborough: Though you cannot speak to anything else in precise sums, do you recollect that you did buy for anybody else on that day besides the Accountant-General?—*A.* I can speak to an entry on my books on that day, but I cannot say whether I did the business myself. I do not recollect doing anything else myself besides that bargain.

A Juryman: At what price could you have bought that lot of Consols on Saturday?—*A.* I can state the purchases I made on Saturday to the Court; I purchased on Saturday, the 19th, for the Accountant-General 6,894*l.* 11*s.* 4*d.* at 70 per cent.

Mr. Gurney: I have called for Lord Cochrane's affidavit; it is admitted by my learned friends that notice has been given to produce it, and it is not produced.

APPENDIX B.

Summing-Up.

Lord ELLENBOROUGH.

Gentlemen of the Jury,

YOU are now come to that period of the case in which your most important duty is to be discharged, as it respects the individuals who are the object of this indictment, and the public, whose interests are to be protected by the justice you are called upon to administer.

This is an indictment for an offence of great malignity and mischief; it is for the offence of conspiracy, which is charged to have been committed by the eight persons whose names are upon this indictment; and it is for you to consider upon the statement of the evidence I shall make to you, how far that offence is brought home to all or any of these defendants.

The offence of conspiracy, gentlemen, is an offence consisting in a wicked concert, contrivance, and combination of individuals, to effect some public or private injury or mischief: that contrivance and that combination is not to be collected, nor is it practicable, in the course of human affairs, to collect it from the mouths of the parties assembled for the purpose of communication, but from the actings and conduct of the several parties as they may appear generally, to conspire and conduce to the same wicked end and purpose; and if it appears to you, from the actings and conduct of these parties, that they entertained the same common purpose of mischief, and that they have by their several actings combined and co-operated to the effecting that same wicked purpose, that is sufficient to bring home the imputation of the crime charged against the parties; therefore the prosecutor need not show that they have met in common council, or even that they have seen one another before, if their acting shows they were influenced by one common purpose of mischief, and aimed at the production of the same malignant end and effect. Suppose persons jointly charged in an indict-

ment with the breaking of an house, are found on different sides of the same house, besetting and endeavouring to enter it at the same time: you need not show that they had actually met, and previously contrived the plan of this joint robbery; the unity of their conduct proves their joint contrivance and concert to accomplish the same end; though, indeed, this is a case where personal presence at the acts done renders all intendment of the personal concert of the actors unnecessary. The same rules which apply to the offence of conspiracy as a misdemeanour apply equally to all crimes committed by concert up to the crime of high treason, which is often established by evidence of the distinct actings of separate parties breathing the same purpose, and immediately conducing to the same end. The question therefore, for you to consider upon the evidence (which I am sorry it will be necessary for me to state to you at a greater length than, with regard to your ease and convenience, I could have wished) will be, whether the case is not brought home by satisfactory evidence to a great number, if not to all the defendants.

The crime charged upon this indictment, in eight different charges or counts, is that of conspiring to raise the price of the public funds; in some of them it is charged to be with a view to corrupt gain upon the part of these persons or some of them, or at least to the *prejudice* of other *individuals*; for that is enough to constitute the offence, even if the individuals engaged in this conspiracy had not (as it is imputed to them that they had) any corrupt motive of personal advantage to all or any of themselves to answer; if the criminal artifice operated, or was in all probability likely to operate, to the prejudice of the public, and was clearly so intended, we need not go further; when we know that a great amount in the funds is at certain periods bought for the public or large classes of individuals; and you find by the testimony of Mr. Steers that on this very day the sum of 15,957*l.* 10*s.* 8*d.* was bought for the Accountant-General, which would have been bought for less; and every person for whose use the Accountant-General purchased, having to acquire by means of such purchase shares in the public securities, would of course have so much the less stock for his money on account of this fraud, and would consequently receive a great pecuniary injury thereby: and no doubt multitudes of persons besides those immediately alluded to, and whose cases are not brought individually under your view, must have been affected by it; for the dealings in the funds are, we know, every day carried on to a

vast amount, and every person dealing on that particular day, as a purchaser, was prejudiced by the practices by which a false elevation of the funds was on that day occasioned.

Of the counts, one or two, I think, are not counts on which, properly, your verdict can be founded, because they state that every one of these Defendants knew that a gain was to be acquired by Mr. Cochrane Johnstone, Lord Cochrane, and Mr. Butt; and it does not appear, with sufficient certainty, that they knew the relation in which these three persons stood to the funds, or their interest and speculations therein; I mean that such persons as M'Rae, Holloway, and so on, might not know the precise situation in which the three stood; but if they all co-operated to the same end, and the North Fleet imposition, as I may call it, was intended to be auxiliary to the imposition intended to be effected by the way of Dover, and the parties knew that they were acting in the same fraud, and were respectively conscious instruments in producing the same effect, they are all guilty of the same conspiracy; and it has been admitted by a learned Counsel for some of the Defendants that his clients, Holloway, Lyte, and Sandom, have been concerned in a conspiracy; but he says that the conspiracy in which they were concerned was another and different conspiracy from the one in which the three first-mentioned of the Defendants were engaged: and that you cannot unite the two conspiracies together and convict them all as guilty of one entire individual conspiracy; and it will be one material point for your consideration, whether, under the circumstances which have appeared in evidence, it is made out to your satisfaction that they were all conspiring to effectuate the same purpose, pursuing similar, and with almost a servile imitation and resemblance, the same means, at the same time, in the accomplishment of the same end.

Now how has it been done? in both instances, by the adoption of disguises. Of what nature are the disguises? in both instances, military disguises; one, indeed, has gold lace round the cape, and the other has embroidery. Sarah Alexander says those procured by M'Rae were officers' coats, with flowers of worsted, and that the hats were embroidered, the one having a brass plate and a gold tassel, instead of the sort of ornaments that the superior actor in this conspiracy (if such you shall be of opinion he was) had. One was decorated with a star and that silver ornament that you have seen; the other was in rather a plainer dress; but there was in each case the assumption of the character of officers; and the communication of false intelligence

respecting the good news which was to accelerate peace, was common to both parts of the scheme. You will consider, upon the whole of the evidence, whether there is not a link or connection between the upper and under plot through the means of M'Rae, and perhaps of Mr. Cochrane Johnstone, and whether the two conspiracies are not united through the means of that person, M'Rae. His conduct itself is extraordinary; by a most remarkable offer, on the part of Mr. Cochrane Johnstone, it is proposed that there should be the sum of 10,000*l.* given to this man—a man in a low and ordinary and desperate situation; and it is stated that Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt would give 3,000*l.* among them. Why should they give that? If, indeed, they could thereby mislead and draw away the public attention, and divert it to the pursuit and hunting down of M'Rae as the sole artificer and perpetrator of the fraud, and could thereby turn aside observation and suspicion from themselves (supposing them to be properly charged with this offence), 3,000*l.* would be well paid, and cheaply employed for such a purpose. It is for you to say whether these letters which have been read to you do not appear pregnant of this contrivance and device on the part of the writer.

The first question, gentlemen, will be, was the Defendant De Berenger the man who was found at Dover, about one o'clock on the morning of Monday, the 21st of February, and who proceeded through the several stages to London, and ultimately to the mansion of Lord Cochrane himself, and was there received with that dress, whatever it was, that he wore; but the dress he wore is proved by so many witnesses that I will not fatigue you with stating it now, because I must, by-and-by, state the whole of the evidence to you.

A great deal of observation has been made about the character of handwriting of what I call the Dover letter—the letter sent to Admiral Foley; the object of sending it to him cannot be doubtful, for it was intended that the Port-Admiral should (as he would if he had believed the report) communicate that intelligence to Government, and which, if the day had been tolerably clear, might by telegraph have reached this town in much less than half an hour, I believe in a quarter of an hour; and having been sent off at this very early hour to Admiral Foley, who was called out of bed to receive it, it would have been in town early, and the stocks would have been up at the very moment, when under the peremptory order before given 50,000*l.* would have been sold, as well as every other part of the stock standing in the names of the Defendants.

Gentlemen, there has been great stress laid upon this letter, and whether it be or be not the handwriting of De Berenger, I will not (for it is not my province) draw the conclusion which might be drawn from looking at that letter; it appears to me evidently an artificial, upright, stiff hand, as contrasted with the ordinary natural character of handwriting of that gentleman. It is sometimes useful to look where the same words occur in different parts of the same letter; and when you come to look at the words, 'I have the honour to be,' in one part of the letter, and the words 'have pledged my honour,' &c. in the other, they present, in the first instance, a more regular formation of letters than I have generally seen, and with reference to the idea thrown out of this being written in great haste, it is not impossible that this gentleman having meditated the whole contrivance beforehand, should have brought this letter down with him, ready written and directed from town, and that he had called for pen and ink merely to go through the appearance of writing a letter, and which he might fold up as if for the purpose of being sent; but that he might hand over to Wright, of Dover, the letter he had brought with him, not trusting to the hurry of the moment for the proper formation of one. I do not say that such is the fact; but it is clear that the letter produced is the one he actually sent; for he says afterwards to the witness, Shilling, that he had sent a letter to Admiral Foley, in order to apprise him that the telegraph might work; the Dover express-boy proves that he carried the letter given to him, to Admiral Foley, and what letter can that be, if it is not this, which is proved to have been delivered to Admiral Foley? This letter was calculated to impress the Admiral with the belief that the allies had obtained a decisive victory, that Bonaparte was killed, that the allies were in Paris, and that peace was likely to take place immediately. After the calamity of the long war we have had, ending, as indeed it has ended, in the fulness of glory, we all feel that we have had an abundant measure of glory, though painfully earned. Everybody recollects the sort of electric effect produced upon this town the moment the news now under consideration arrived; the funds were raised preternaturally; one cannot indeed, on looking back, account for it, how the Omnium should have been up to twenty-eight at that time; there was a considerable elevation beyond that price during the course of that day; it rose to thirty and a fraction.

Gentlemen, the prosecutors allege that the defendant De Berenger, having forwarded this letter, pursued his course,

coming to town in the manner stated, and that he ultimately came to Lord Cochrane's house, upon which I shall hereafter comment. You will not, I think, have any doubt that De Berenger was the man who appeared under the name of Du Bourg; but in order to obviate or remove that impression from your minds, the learned Counsel for the defendant De Berenger did adventure or rather was forced upon an attempt, which I own it seemed to me to require the utmost firmness to attempt to execute; for there never was evidence given since I have been present in a Court of Justice which carried to my mind such entire conviction of the truth and authenticity of that part of the story; you were yourselves witnesses to the manner in which the witnesses, who spoke to the person of De Berenger, were put upon the investigation; they were told to look round the Court, and they accordingly threw their eyes about the Court in every direction, before they found the person whom they said they had so taken notice of; you saw them look behind them, look down, and on every side of them, and then suddenly, as if they were struck by a sort of electricity, conviction flashed upon their minds the instant their eyes glanced upon him; this occurred in every instance I think but one, where the witness, not having his eyes conducted that way, did not discover him. The learned Counsel having such abundance of proof on this head did not resort to a means usually adopted on occasions of this sort, and to which it is perfectly allowable to resort, namely, that of showing the person to the witness, and asking him whether such person was the man; when a man stands for his life at the bar of the Old Bailey, the witness is frequently bid to look at the prisoner at the bar, and to say whether he remembers him, and whether he is the person, or one of the persons (as the case may be) who robbed him; and he pronounces whether, according to his recollection, he is the person or not. So multiplied a quantity of testimony, so clear, and so consistent, was, I think hardly ever presented in the course of any criminal trial; differing in no circumstance respecting his person and dress, excepting in some trifles, which, amidst the general accordance of all material circumstances, rather confirmed by this minute diversity, than weakened, the general credit of the whole, and gave it the advantage which belongs to an artless and unartificial tale. Some saying his cap was a little flat, as it might be owing to its being drawn over his face; one saying that it was brown; another, I think, that it was of a fawn colour; and one who spoke with the utmost certainty in other particulars, that

it was nearly the colour of his pepper and salt great coat; but in all the other substantial particulars, they concur in their accounts most exactly; and these minute variances exclude the idea of any uniform contrivance and design in the variation; for where it is an artificial and prepared story, the parties agree in the minutest facts, as well as the most important; and indeed, gentlemen, so abundant, so uniform, and so powerful is the evidence as to one point, viz., the identity of Berenger, that it strikes me, that if these witnesses are not to be fully believed as to this point, then almost every man who has been convicted at the Old Bailey upon so much weaker proof of his being the person who committed the particular crime with which he is charged (and which has been the case in almost *every instance* I have known), may be considered as victims unjustly sacrificed in a course of trial, to the rash credulity of their judges and juries. If the evidence produced is not sufficient to establish this point I am at a loss to say by what description and quantity of testimony, such a point can be satisfactorily made out in a course of trial.

When the learned Counsel addressed himself to prove an *alibi*, I could not foresee how it would be satisfactorily accomplished; I cannot say I believed he would accomplish it, but I believed it would be attempted by better evidence than that which has been adduced; you recollect the prior testimony of the Davidsons; the servants had gone out at two, instead of four; Mr. De Berenger, according to the evidence he has adduced, is found three miles and a half off; where he had dined, is not shown, he is in a hurry to get back; according to the next set of *alibi* witnesses, he is found at Mr. Donithorne's between eight and nine, having been found there in the morning, to measure the garden, at not a very convenient time, with the snow upon the ground; and who are the people who speak to this? a man who has been in the habit, which some of us are, of examining the countenances and demeanor of men brought forward to speak to guilty untruths, becomes in a degree familiar with the modes of behaviour which such persons adopt. From something in the manner of one of the witnesses, which suggested to me that such a question might not be improperly addressed to him, I asked him, whether he had not been used to be bail? (thinking that he might possibly be one of those hired bail, who are the disgrace of our Courts of Justice). What does he answer? why, he had been bail once, and then he had been bail another time, and the amount he did not know; and I

think he said he did not know whether he had not been bail oftener; a man who is in the habit of being bail, must swear to the amount, and he must swear he is an housekeeper; and this man had no house over his head of his own, but was living in the house of another; I thought, too, the man might have failed, and been obliged to quit his house on that account; and it so appears, that he was undone in his circumstances, and that he was a man occasionally presenting himself to swear to his possession of property, warranting his becoming bail for others. Then what becomes of Donithorne; he is an inferior cabinet-maker, employed by Mr. Cochrane Johnstone, and has brought a great number of penal actions for him; at every turn of the case, he doubles in upon us, and you will presently have to say, whether he and others, and which others, are not affected by the case.

Gentlemen, the evidence begins with that of John Marsh, who keeps the packet-boat public house at Dover, he says, 'Upon that 21st of February, I heard a knocking at Mr. Wright's fore door of the Ship Inn, between one and a quarter after one o'clock; I went out upon hearing that, and, on going out, I found a gentleman there, who had on a grey great coat, and an uniform coat under it. I called for a person at my house to bring two lights across; when I had the two lights, the gentleman had got into the passage; he had a star on his red coat under the great coat; it is similar to this star.' Now, it is said these persons saw him in the dark, but candles were brought over, and you may see a man's countenance by the light of two candles placed near him, almost as well as you could in the day-light we have at present; it would certainly be sufficient for the purposes of observation; if it were not so, half at least of the injuries done at night would be very imperfectly proved, if proved at all. He says, 'I do not recollect that he had any other ornament; he was very anxious for a post-chaise and four; the porter at the Ship came down to him; he wanted an express horse, and a man to send to the Admiral at Deal;' then it is highly probable, as he wanted an express horse, that he did send this letter by that express; the witnesses swear they saw him writing a letter. 'I asked him where he came from, and he told me, he was the bearer of the most important dispatches that had been brought to this country for twenty years; I asked him where he came from? he told me from France. I asked him where he landed? he told me on the beach; and he begged of me to get a post-chaise and four for him; and then I went and called Mr.

Wright, of the Ship Inn; then he wanted pen, ink, and paper. I had shewn him into a room; as soon as Mr. Wright came downstairs, Mr. Wright gave me a sheet of paper, and pens, and ink, which I carried into the room; I gave it to him, and he began to write upon it; he called for a bottle of Madeira, and something to eat.' The circumstance of his having wine is afterwards confirmed, for when he is going up Shooter's Hill he is giving it away to some of the postillions. 'I asked him whether I should call the collector of the port, telling him that it was his business to see such people when they landed; he made answer to me that his business did not lie with the collectors; then Mr. Wright came, and I had no more conversation with him; two candles were placed, one on each side of him, and I could see him; *that is the gentleman* (pointing him out). A gentleman of the name of Gourley was there, and another of the name of Edis, was also there.' Then he says, 'I went to get horses with all possible dispatch; he told the two postillions he would give them a napoleon each;' and that description of coin attends him throughout, nor does it quit him to the last, for in the very desk when he is taken up in Scotland, there were found napoleons tallying with these; therefore the proof in this particular is dove-tailed and closed in, beyond anything I almost ever saw in a Court of Justice. Then he says, "he had a German cap on, and gold fringe, as I thought;' and it turns out, upon an exhibit we had made to us of a similar cap, that De Berenger had such a cap; those that are shewn, were made in the resemblance of what, from the evidence, they collected the articles to be. They are not the originals; the coat, it appears, was cut to pieces, and got out of the Thames, but the actual cap is not produced; 'this is all that I heard and saw.'

Upon his cross-examination, he says, 'I am not in the least connected with the Ship Inn, but on hearing this knocking I went across to see who the gentleman was out of mere curiosity; I did not observe whether it was moon-light, foggy, or star-light.' It does not signify which it was, for he saw him by candle-light. 'The boots let him in; I was with him about five minutes altogether, but I cannot speak to a minute; he was in great haste to get away; I should think he was not more than twenty minutes at Mr. Wright's altogether. I held the candle while the boots unlocked the parlour door, and I went and put them on the table; he wished me to quit the room, and I did not go in any more.' Then he is asked about a large company in the inn, he says, 'I do not know that there had been any; I never saw

him before nor yet since, till to-day, but I can take upon me confidently to swear *that this is the man.*' He made a very strong observation upon him, and he pointed him out in the manner you saw. 'I never was examined upon this subject before, only by Mr. Stow, the collector.'

On his re-examination, he says, 'he told me before I sent for the lights what his business was, and that he had landed on the beach. I was in the passage with him till the lights came; my attention was called to him as a stranger of importance. I saw the person when I was by myself in the hall and knew him the instant I saw him; I have not the least doubt that he is the same man.'

One of the other persons who saw him, of the name of Gourley, a hatter at Dover, speaks to the same thing.—'I was at Mr. Marsh's, the packet-boat, on the morning of the 21st of February; Mr. Marsh went over and called for lights; I took two candles and went across with them to the Ship, where I perceived a gentleman in a pepper and salt coloured coat, similar to that which is shewn to me. Mr. Marsh asked me to go and call the ostler up, and to tell him to get a post-chaise and four immediately. I did so; and after some time, when I had got the ostler up, I returned back again and found the stranger in the parlour; there were lights in the room; there were two candles upon the table; the gentleman was walking about in a red uniform trimmed with gold lace, with a star upon his breast, and he had a cap on similar to that, with gold lace on it. I asked him what news; having heard them say he was a messenger. He said messengers were sworn to secrecy, but that he had got glorious news; the best that ever was known for this country. He rang the bell, and called for pen, ink, and paper to write a letter to send off to the Admiral at Deal.' So that he professes, as the first witness says, to write a letter; and here he speaks of sending it off to the Admiral at Deal:—'that was brought to him, and he continued writing some little time while I was there. I took leave of him before he had finished the letter; the candles were sufficiently near him to observe him; that is the gentleman, and I have not the least doubt that it is him.'

On his cross-examination, he says, 'I came over when I was called by Mr. Marsh to bring candles; I went and called the ostler, and waited till I waked the ostler; I left the candles in the passage; I saw him write on the paper when it was brought; I was sitting with Mr. Marsh when he arrived; I had not dined

at the packet-boat.' I suppose the question pointed to whether this man was likely to have been sober or drunk at that time: I do not know that there is anything extraordinary in a man's sitting up till twelve or one o'clock; but that has been the subject of the observation.

Upon his re-examination, he says, 'perhaps I might be in the room, so as to have an opportunity of observing him three or four minutes; my attention was called to him particularly; he had a cap on sometimes, and sometimes not; *I have no doubt that is the man.*

Eliot Edis, a person who you recollect was rather deaf, says, 'I am a cooper in the victualling yard at Dover, I was at the packet-boat on the morning of the 21st of February, Gourley was there with me; my attention was called to a messenger who had arrived. I saw the messenger first at the Ship, he was in a room at the time, walking up and down the room. I observed his dress: he had a grey great coat and regimentals, scarlet trimmed with gold; I did not particularly notice any other ornament; he had a cap with a gold band, that was the colour of the coat, it was a slouched cap;' upon that there has been much observation; 'the cap appeared to be made of a kind of rough beaver, I do not know whether it was black or brown;' by that light you would not know very distinctly whether it was black or brown; 'it was rather flat all round, and had no rim like a hat. I saw him sit down and write. I did not hear him say whom he was writing to. I could hear him talk; but not to understand him, being rather deaf; his cap was on while I was there.' He is desired to look round, and to point out the gentleman, and he says, 'that is the gentleman,' pointing to him. 'I have no doubt that is he; I have never seen him before that night, nor since;' and yet as you saw him, looking round, he instantly found him out among so many as there were then round him, it is not probable that if they had not seen him before, and had not his picture engraved upon their minds, they would have known him again so well; and it would be very remarkable that they should all pitch upon the same person. 'I might see him perhaps for five or six minutes; the cap was rather slouched; it had no brim to it; it was drawn over his forehead; the round part of it was drawn over his forehead. I was not in court when Marsh was examined.' It was suggested that he might have picked up his story from Marsh; but a man who was deaf could not have heard him, if he had been in court.

Mr. William St. John is next called; he speaks in the same

manner; it is unnecessary to go through the whole of it. He says, 'he wore a scarlet coat with long skirts, buttoned across, with a red silk sash, grey pantaloons, and a grey military great coat, and I think it was a seal-skin cap;' now with that light he might very easily mistake; I believe it is very common to have seal-skin caps for travelling.

Mr. Gurney. This is seal-skin, my Lord.

Lord Ellenborough. I did not know that; 'he had, I think, a seal-skin cap on his head, of a fawn colour,' and it is a fawn colour, certainly; 'there were some ornaments on his uniform, but I do not know what they were, something of a star on his military dress; he was walking up and down the room in a very good pace; I asked him, whether he knew anything of the coming of one Johnson,' a messenger whom the witness expected; 'he said he knew nothing at all about him, and begged I would leave him to himself as he was extremely ill;' this gentleman appears too inquisitive, and he did not seem to like him. 'On my leaving the room, he requested that they would send in paper, and pen and ink; I immediately retired, and met the landlord, Mr. Wright, coming into the room, I believe, with the paper, pens and ink; in a few seconds afterwards I returned into the room, and he was writing, I did not hear him say anything about the paper he was writing. I left the room immediately. I saw him again at the door in the street. When he was stepping into the carriage, I asked him what the news was; he told me it was as good as I could possibly wish; I did not see what he did with the paper he was writing upon, nor did I hear him say what he was writing about, he went away the first of us.'

Now this man has been made a good deal the subject of comment; for it appears that he had gone down to Dover, and was, in some respect, waiting for news; there was a kind of reluctance in him to acknowledge that, in respect of which there need not have been any, for there is nothing whatever objectionable in his sending up paragraphs for the 'Traveller' newspaper. I believe the publishers of these papers mostly have some persons stationed at the out-ports, to obtain intelligence of important events, and particularly at so critical and anxious a moment as that was, they would naturally have such persons at the port of Dover; there was nothing he should not avow; and if it was with the view to purchase in the funds, in consequence of the intelligence he should receive; if a man purchases funds upon public intelligence fairly and honestly come by, when everybody has an equal opportunity of acquiring it and the intelligence is genuine, it is

like buying any other article in the market, upon fair knowledge of the circumstances connected with its value; it is as allowable to deal in that article as in any other, upon equal terms; but the objection here is to a dealing which resembles the playing with loaded dice; if one plays with secret means of advantage over another, it is not fair-playing—it is a cheat; I own I have been much shocked with this sort of fraudulent practice, called three times over, in the letter of Cochrane Johnstone, *a hoax*; I cannot apply a term which imports a joke to that, which if the Defendants are guilty of, is a gross fraud upon public and private property; and unless every species of depredation and robbery is to be regarded as a species of pleasantry, I think the name of hoax, which has been given to it, is very ill applied to a transaction of so dishonest and base a description.

Then Mr. St. John says, 'I went to Dover, by desire of a friend of mine; his name is Farrell; he is a merchant in the city, and is a proprietor of the "Traveller."' Then being asked where that gentleman lived, he says, 'In Austin Friars; I was to communicate to Mr. Farrell or to Mr. Quin.' Then he says, 'certainly the arrival of news at such a time would have an effect upon the funds.'

Then William Ions, the express-boy, being shewn to the last witness, St. John, he says, 'this is the boy whom I saw sent with one of the two expresses that was sent that night; this lad went with the express to the Port-admiral at Deal, I believe; it was the express that Mr. Wright gave him from the gentleman who was there; *from that gentleman.*'

William Ions says, 'In February last I was in the service of Mr. Wright, of Dover; I was called up when the officer arrived there, and was sent with an express to Admiral Foley; I took the letter I received to Admiral Foley; Mr. Wright gave me the letter whilst I was upon my pony; he came out to the door with it; and that letter which I received, I delivered to the Admiral's servant at Deal. She took it upstairs to the Admiral, and I saw the Admiral before I left Deal, after the letter was delivered to the servant, who took it upstairs.' Therefore, whatever he received at Dover he delivered to the Admiral, and what the Admiral received we have here; there is an interruption in the proof certainly, in consequence of Wright, of Dover, not being well enough to be here as a witness; and therefore it did not appear by his testimony, that that which he, Wright, had received, Wright had delivered to his express-boy, to go over to Deal with; but that is supplied by the circumstance of De Berenger, if he

was the person, telling Shilling, the Dartford driver, that he had sent off such an express; therefore it must be presumed that he had sent that letter which contained an express to the Admiral; and that which the Admiral received he shews you.

To supply that defect in the evidence, Mr. Lavie was called to say, that he believed it to be De Berenger's handwriting; and though this does not appear to be the ordinary undisguised hand of this defendant, yet after Lord Yarmouth, who had given his evidence that he did not consider it his handwriting, referred to the letter *R*, the initial letter of Random de Berenger's christian name, he considered *that* as resembling his handwriting, and you would observe, whether there was not such a resemblance as Lord Yarmouth mentions, if it were at all material; but it ceases entirely to be material, when he tells Shilling, as he does, that he had actually sent such a letter to the Admiral.

Admiral Foley is next called; he says: 'The letter was brought to me that that boy brought to the house; I was a-bed; I read the letter in bed; I did not mark it; I enclosed it in a letter to Mr. Croker, the Secretary to the Admiralty; that is the letter; I sent it enclosed in this letter to Mr. Croker; I arose immediately, and sent for the boy into my dressing-room; I questioned the boy a good deal; I did not telegraph the Admiralty, because the weather was too thick; when I sent for the boy up, I had the letter in my hand; it was then three o'clock, and dark; the telegraph would not work; I had a candle, of course; I am not certain I should have telegraphed the Admiralty;' and if he had seen reason to doubt, he would have acted very properly in abstaining from so doing; he could not communicate all that would excite the doubts he might himself entertain; he could only send a few words, indicating the most important particulars of the story which the letter contained, and therefore he might very properly hesitate about communicating any part, if he thought the whole contained doubtful, still more if untrue intelligence.

The evidence of Mr. Lavie is only that he believed this to be De Berenger's handwriting; that he had seen him several times in the custody of the messenger in the month of April, and in the course of those interviews, he saw him write a considerable deal; he saw a whole letter which he handed across to him when he had written it, and it was given back and copied again, and for about an hour he was writing different things, and handing them backwards and forwards. He says, 'I also saw his papers in his

writing-desk, and I verily believe that to be his handwriting, from what I saw him write.' This is the evidence, and much less than this evidence, is what we receive every day in proof of bonds, notes, and bills of exchange; a person says, I have seen such an one write, and I believe that to be his handwriting; and that is sufficient to launch it in evidence as *primâ facie* proof, leaving it to the other side to resist such proof, if they can.

Gentlemen, now we put this person in motion from Dover. Thomas Dennis is next called, who says, 'I am a driver of a post-chaise in the service of Mr. Wright, at the Ship, at Dover. Early on the morning of the 21st of February, I drove the chaise from thence to Canterbury to the Fountain Inn; I drove only one person, it was a man; it was too dark to see how he was dressed; I had the leaders; he gave me and the other lad a napoleon apiece.' He could not see the person; and there is identity only by the sort of specie in which he deals. 'I sold it for a one-pound note. I know the lads at Canterbury, who took him after me—Broad, and Thomas Daly; I saw Broad and Daly set off. There is nothing extraordinary in persons travelling day or night into Canterbury. I cannot say whether it might be the 20th or 22nd; persons do not often give us napoleons for driving them, I never had one given me before.' No immaterial circumstance to induce a recollection of this particular traveller, nor (connected with similar evidence from other witnesses) to establish his identity.

Edward Broad, a driver of a chaise at the Fountain at Canterbury, says, 'I remember the last witness coming to our house with a fare, early in the morning in February, I do not remember the day of the month, nor the day of the week; it was one gentleman came from the Ship at Dover; I drove the leaders—I drove to the Rose at Sittingbourne; the chaise went forward with four horses—he did not get out. Michael Finnis and James Wakefield drove him from thence; I did not receive any money from him, the other boy received the money, I had a napoleon for my share.' Till the daylight breaks, we have nothing to identify him in the course of his conveyance, but the napoleons.

Then Broad, upon his cross-examination, says, 'I have long lived at the Fountain, and have known Thomas Dennis some years; I do not know that I ever drove a fare that he brought before; I might; there are a great many boys from that inn at Dover; I have driven a single gentleman before, and sometimes

a chaise and four.' But upon re-examination, he says, 'I never before received a napoleon for it.'

Michael Finnis, the driver of a chaise at Sittingbourne, says, 'I remember the last witness bringing a gentleman in a chaise and four to our house, I did not take particular account of the time, it was early in the morning, it might be between four and five o'clock; I did not take particular notice, for I had no watch with me—it was dark; I drove him to the Crown at Rochester, Mr. Wright's house; I cannot say what time it was when we got there—we were not above an hour and ten minutes in going. The gentleman got out there, and gave me two napoleons, one for myself, and one for my fellow-servant; I took no particular notice of him; he had a pepper and salt coat on, and a red coat under that I perceived, and a cap.' So that this man took no particular notice of his countenance, but speaks to his dress and his appearance, as the other witnesses do.

Mr. Wright, who keeps the Crown Inn at Rochester, who saw him in the house, speaks with much more particularity; he says, 'I remember a chaise and four from Sittingbourne arriving at my house on the morning of the 21st of February, I remember that was the day; it was a tall person, rather thin than otherwise, who came in the chaise; he had a pepper and salt great coat, with a military scarlet coat under it; the upper coat was nearer the colour of that coat, than anything I could state (*pointing to the coat on the table*); the scarlet military coat he had under that, was very much trimmed with gold lace down the front, as it appeared by candle light, and a military cap with broad gold lace round it; it appeared to me to be cloth or fur, it appeared to be nearly the colour of the great coat.' The cap does not appear to have any resemblance to the great coat, but in all other respects his description seems to be right. 'On the military coat there was a star, and something suspended, either from the neck or the button, I do not know which, something which he told me was some honour of a military order of Russia;' it turned out to be a masonry order. He is shown the star, and he says, 'it had very much the appearance of that sort of thing. I suppose I was in conversation with him about ten minutes; it was about half-past five when the chaise drove into the yard; during those ten minutes I was getting some chicken for him in our bar parlour. I was called up by the postboy of my brother at Dover, I went into the yard, and found a gentleman looking out at the front window of the chaise, and he said, he was very hungry, could he get anything to eat? that

he had ate nothing since he left Calais ; I asked him, if he would have a sandwich, as I supposed he would not get out of the chaise ; he said he would get out, and he did get out, and I took him into our bar parlour ; when he got there I said, I am led to suppose, that you are the bearer of some very good news to this country ; '—a very natural overture to conversation on the part of an innkeeper, and to extract a little intelligence from him ; ' he said, he was ; that the business was all done—that the thing was settled ; I asked him, if I might be allowed to ask him what was the nature of his dispatches ; he said, he is dead ; I said, who ? he said, the tyrant Buonaparte, or words to that effect, I believe these were the exact words ; I said, is that really true, sir ? ' Upon which this gentleman seems to have been piqued at having his veracity questioned, and said, ' if you doubt my word, you had better not ask me any more questions ; ' in answer to which, Wright, not being willing to have his curiosity unsatisfied, said, ' I made an apology for doubting the veracity of his story, and asked him, what were the dispatches ? he said, there had been a very general battle between the French and the whole of the allied powers, commanded by Schwartzenberg in person ; that the French had been completely defeated, and Buonaparte had fled for safety ; that he had been overtaken by the cossacks, at a village which I think was called Rushaw, six leagues from Paris ; that the cossacks had there come up with him, and had literally torn him in pieces ; that he had come from the field of battle from the emperor Alexander himself, and that he either was an aide-de-camp of the emperor, or of one of his principal generals.' Now the account he gives tallies almost in terms with the letter which had been sent off to Deal ; so that there is another proof of the identity of this person, and a connexion of him with this letter sent to Admiral Foley. Then he adds, ' He told me, that the allies were invited by the Parisians to Paris, and the Bourbons to the throne of France. That was pretty well all the conversation that passed ; he ate very little, if he did anything—he said he was very cold ; I asked him, if he would take any brandy ? he said, no, he would not, for he had some wine in the carriage ; ' it turned out that it was so. ' He inquired what he had to pay ? I told him, what he had had, had been so uncomfortable, I did not wish to take anything for it ; he did not accept of that, he threw a napoleon on the table, and desired me to take that for what he had himself taken, and wished me to give the servants something out of it, he meant the whole of the servants, for when he got into the chaise the ostler

asked for something; and he told him, that he had left something with his master, out of which he might be paid. He went away in the same chaise that brought him, with four horses. James Overy and Thomas Todd were the persons who drove him.' Mr. Wright had proceeded thus far, and then he looked round the court, and fixing upon De Berenger, said, 'I believe that is the person; I have no doubt—it is certainly the gentleman; I had never seen him before, or since.' This undoubted identification of person is almost peculiar to this case; I never saw a case in which so many persons turned into the court at large, recollected a man at once, and with so much certainty.

Upon his cross-examination, he says, 'I never saw the gentleman before nor since till to-day; he wore a large cockade, very dirty, as if it had been worn a long time;' then he produced the napoleon; and he says, 'upon looking at him, I am sure he is the same person.'

James Overy, who was the postillion, says, 'I took up a person at my master's house at Rochester, on a Monday; I do not remember the day of the month. I drove him to Dartford, to the Granby; he had on a grey mixture coat; a red coat like an aide-de-camp, adorned with a star, very full indeed, something about his neck hanging down, and a cap, and a bit of white ribbon about the cap, such as officers wear, with a gold lace band round it. When I came to Dartford, it was ten minutes before seven; it was daylight two miles before we came to Dartford. I am not sure I should know the person again; he gave me two napoleons, and he paid me five 1*l.* notes, and a shilling for mine and the Dartford horses, and the turnpikes; he gave us a napoleon a-piece. Thomas Shilling and Broad took him from Dartford.'

On cross-examination, he says, 'the cap was such a cap as officers wear in a morning, slouched down, I think the top of the cap a little turned down; I did not observe the colour.'

William Tozer, the next witness, says, 'I keep the Crown and Anchor at Dartford; I remember Jem Overy bringing a fare to a house in our town on a Monday about the 21st of February, and the person I took notice of was sitting in the chaise. I made my obedience to the gentleman in the chaise, hoping that he had brought us good news; he said he had, and that it was all over; that the allies had actually entered Paris; that Buonaparte was dead, destroyed by the cossacks, and literally torn to pieces.' Here again is the same account in effect which is contained in the letter to Deal, given by word of mouth, 'and that we might expect a speedy peace.' 'During the

conversation' I saw him give Overy two gold pieces, which afterwards proved to be French pieces; I had them in my hand. I saw enough of the person in the chaise, to be positive I should know him if I saw him again.' This was the witness, who looking round, did not find the defendant; to be sure, the Counsel might have asked him whether that was the person; but from delicacy that was not done, which was certainly an unnecessary delicacy upon such a subject.

Thomas Shilling, the chaise-driver, from Dartford, says, 'I remember taking up a gentleman who came in a chaise and four to Dartford, I believe it was on the 21st of February, it was on a Monday. I had the wheel-horses. On our road to London, he discoursed with me a good deal; the waiter at Dartford, at the Granby, first spoke to him, asking him whether he brought any good news; the gentleman said, yes, it was all over; Buonaparte was torn in a thousand pieces; the cossacks fought for a share of him all the same as if they had been fighting for sharing out gold; and the allies were in Paris. We were ordered to go on; we had gone to Bexley before the gentleman spoke; the gentleman then told me not to hurry my horses, for his business was not so particular now, since the telegraph could not work. I told him, I thought the telegraphs could not work, for I knew almost every telegraph between Deal and London. He then said, 'postboy, do not take any notice of the news as you go along;' I told him I would not, unless he wished me to do so; he said, I might tell any of my friends as I returned, for he durst to say they would be glad to hear it; he said he had sent a letter to the Port Admiral at Deal, for he was obliged to do so;' therefore you have him, unless this be a premeditated falsehood in the evidence of this man, Shilling, authenticating the fact of the letter from Dover; 'he said that he had walked two miles when he came ashore at Dover, before he got to the Ship Inn; that the Frenchmen were afraid of coming any nigher to Dover, for fear of being stopped.' Where he got into Dover, or how, we do not hear; of the points of the outward voyage we know nothing; of the homeward we have a pretty good account of all the places where he touched, &c. 'Then we drove on till we came to Shooter's Hill; when I got there, my fellow-servant and I alighted, and the gentleman gave us part of a bottle of wine; he said we might drink, because he was afraid the bottle would break; he gave us some round cakes also. I chucked the bottle away, and handed the glass again into the chaise; he told me that I might have it; he then said,

'postboy, you have had a great deal of snow;' I said, 'we have;' he said, 'here is a delightful morning, postboy; I have not seen old England a long while before;' then he asked me which was the nearest coach stand; I told him at the Bricklayers' Arms; he told me that would not do, it was too public, he was afraid somebody would cast some reflections, and he should not like it.' It was bringing him very nearly within the vicinity of the King's Bench, where it should seem his countenance was better known than he liked it to be. 'I told him I did not think anybody would do that, they would be too glad to hear of the news; he asked if there was not a hackney-coach stand in Lambeth; I said "yes," he said "drive me there."'

Now it has been observed he points his direction towards Lambeth, and the other express, it seems, that went through the city, which has been called the Northfleet expedition, is ordered not to go to Lambeth, but to Lambeth Marsh. The learned Counsel has remarked, that they are not ordered to the same point at first, and that it would have been a strong confirmatory point, if they had been so; but there is, to a great degree, an identity of direction, an identity of object, and something like an identity of disguise in military uniform; 'he said, drive me there, postboy, for your chaise will go faster than a hackney-coach will. I drove him to the Three Stags in the Lambeth road; there was no hackney-coach there. I ordered my fellow-servant to stop, and looked back, and told the gentleman there was no coach there; but that there was a coach stand at the Marsh Gate.' So that the Marsh Gate arose incidentally, and was not his original plan; 'and if he liked to get in there, I dared say nobody would take any notice of him; I think he pulled up the side blind, that had been down before all the way; when I got there, I pulled up along side to a hackney-coach; I called the coachman, and the waterman opened the coach door, and I opened the chaise door; the gentleman stepped out of the chaise into the coach without going on the ground;' the question which produced this answer was put with a view to something adverted to, as published upon the subject, in which some evidence was supposed capable of being opposed to the story of the driver, in this particular, who, however, relates it plainly and naturally, and is confirmed by the waterman, who was there at the time; 'he then gave me two napoleons; he did not say one was for my fellow-servant, and the other for myself, but I concluded that it was so; I have got them here,'

and he produces them; so that it does not appear that he has distributed this gentleman's bounty, but he is still a trustee for his fellow-servant. 'I did not,' he says, 'hear him tell the coachman where to drive to. The name of the coachman is Crane. I know the person of the waterman very well. The gentleman was dressed with a dark fur round cap, and with white lace, and some gold round it; whether it was gold or silver I cannot say; he had a red coat on underneath his outer coat; I think his outer coat was a kind of a brown coat, but I will not swear to that; I saw a red coat underneath it, down as far as the waist; I did not see the skirts of it; I think it was turned up with yellow, but I should not like to swear that; it had some sort of a star upon it. I think upon his outer coat there was a kind of white fur; but I should not like to swear to that. I should know him in a moment. I have seen him and knew him again; that is the gentleman (*pointing to him*); I have no doubt. I saw him once before in King Street, Westminster, in a room; I knew him then the moment I saw him; I never had the least doubt about him; the moment I saw him I knew him.

Upon his cross-examination, he says, 'I was not told this morning in what part of the court he sat; I looked round the court when I came in, and saw him immediately; I never saw him before February.' He is asked about a reward that was offered by the Stock Exchange, he says, 'I heard of it the day it was printed, two or three days after this transaction happened. I remember a club at Dartford, called the hat club; I was there.' And then there is some foolish story about his laying a wager there; but as there is no evidence brought to impeach his testimony upon the grounds to which the cross-examination went, it is unnecessary to pursue that part of the examination further; he says, 'Lambeth Marsh is not far from the Asylum. I went there for the purpose of getting a coach; *that he says* (pointing to Bartholomew) *is the waterman.*'

Then William Bartholomew the waterman is called; he says, 'I am a waterman attending the stand of coaches at the Marsh Gate; I know Shilling by seeing him come up with post-chaises; he is a Dartford chaise-boy. I remember his coming with a chaise on the 21st of February; there were four horses, and there was a gentleman in it; it was between nine and half past nine in the morning; there was only one coach on the stand; one Crane drove the coach; I saw the gentleman get out of the chaise into the coach, he stepped out of the one into the other; I opened the door, and let down the step for him; he had a

brown cap on, a dark drab military great coat, and a scarlet coat under it; I only took notice of the lace under it. The gentleman ordered the coach to drive up to Grosvenor Square; I do not remember that he told me the street in Grosvenor Square. I really think that is the gentleman, it is like him; dress makes such an alteration, that I cannot with certainty say.'

Then Mr. Richard Barwick says, 'I am a clerk to Messrs. Paxtons & Co., bankers, in Pall Mall. I remember passing by Marsh Gate on the morning of Monday the 21st of February. I observed a post-chaise with four horses, it had galloped at a great rate; the horses were exceedingly hot, and I saw a man getting into a hackney coach; I followed it, and saw it as far as the Little Theatre in the Haymarket; I wanted to know what the news was.' Being a banker's clerk, it was natural he should wish to know what the public news was. 'I observed the coach passed the public offices in the way.' It appears, that he was a little surprised at this person not stopping to communicate his news at those offices. Whether he suspected him or *not*, he does not say; but observing that he stopped at none, and it being time for him to go to the banker's shop, he did not think it worth while to pursue him any further. This was about nine o'clock, as he supposes, that he left him in the Haymarket. Then, he says, the gentleman had a cap on with a gold band, such as German cavalry use at evening parade; this appears to me something like it.

Then William Crane, the coachman, says, 'I remember on Monday morning the 21st of February, taking up a fare at Marsh Gate from a post-chaise and four from Dartford. I was directed to drive to Grosvenor Square; I drove into Grosvenor Square. The gentleman then put down the front glass, and told me to drive to No. 13 Green Street; the gentleman got out there, and asked for a colonel or a captain somebody; I did not hear the name, and they said he was gone to breakfast in Cumberland Street; the gentleman asked if he could write a note; he then went into the parlour; the gentleman gave me 4*s.*; I asked him for another.' Hearing that napoleons had been distributed to drivers, he thought that a hackney-coachman might ask for a little more of his bounty than he at first received. 'He took a portmanteau that he had, and a sword, went in and came out again, and gave me another shilling. The portmanteau was a small black leather one; I saw that gentleman in King Street, Westminster, at the messenger's

house. I think this is the gentleman here; when I saw him in King Street, as I came downstairs, he looked very hard at me; I knew him then, though he had altered himself a great deal in his dress.'

Upon his cross-examination, he says, 'I went to Mr. Wood's, the messenger of the Alien Office, for the purpose of seeing him; I walked down stairs, and met the gentleman coming up stairs, and I thought he was something like the gentleman I had carried; I do not know every person I carry in my hackney-coach. This person, when I got to Green Street, I saw had a red coat underneath; the waterman opened the coach door for him to get in.' So that he was within view of the waterman. 'He had on a brown-grey great coat, with a brown fur cap.'

Now, gentlemen, he is brought to the house of Lord Cochrane; further evidence arises afterwards upon the subject of his being there.

We will at present follow the dress to its conclusion. George Odell, a fisherman, says, 'In the month of March, just above Old Swan stairs, off against the Iron Wharfs, when I was dredging for coals, I picked up a bundle, which was tied up with either a piece of chimney line or window line, in the cover of a chair-bottom; there were two slips of a coat, embroidery, a star, and a piece of silver, with two figures upon it; it had been sunk with three pieces of lead and some bits of coal; I gave that which I found to Mr. Wade, the secretary of the Stock Exchange; it was picked up on the Wednesday, and carried there on the Saturday. I picked this up on the 24th of March.' You have before had the animal hunted home, and now you have his skin, found and produced as it was taken out of the river, cut to pieces; the sinking it could have been with no other view than that of suppressing this piece of evidence, and preventing the discovery which it might otherwise occasion; this makes it the more material to attend to the stripping off the clothes which took place in Lord Cochrane's house. When he pulled off his great-coat there, what must he have displayed to his lordship's eyes, if present at the time? Did he display the uniform of the rifle corps? The uniform of the rifle corps is of a bottle-green colour, made to resemble the colour of trees, that those who wear it may hide themselves in woods, and escape discovery there; that is, I presume, the reason of their wearing that species of uniform, and as to the idea suggested in Lord Cochrane's affidavit, that his exhibiting himself in that uniform would be deemed disrespectful to Lord Yarmouth. Lord

Yarmouth has told us, that on the contrary he should have thought it a matter of respect to him, and proper as his officer, to have appeared before him in that very dress.

The account that is given of this man's pulling off his dress, as contained in the affidavit of Lord Cochrane, is highly deserving of your attention. It is a rule of law, when evidence is given of what a party has said or sworn, all of it is evidence (subject to your consideration, however, as to its truth), coming as it does, in one entire form before you; but you may still judge to what parts of this whole you can give your credit; and also, whether that part, which appears to confirm and fix the charge, does not outweigh that which contains the exculpation. Now I will state to you, what is Lord Cochrane's affidavit; it may as well come in now in this period, as in the later period in the cause; it was produced in the pamphlet published by Mr. Butt, and is prefaced by Lord Cochrane thus, 'Having obtained leave of absence to come to town, in consequence of scandalous paragraphs in the public papers, and in consequence of having learnt that handbills had been affixed in the streets, in which I have since seen it is asserted, that a person came to my house at No. 18 Green Street, on the 21st day of February, in open day, and in the dress in which he had committed a fraud; I feel it due to myself to make the following deposition, that the public may know the truth relative to the only person seen by me in military uniform at my house on that day.' Now it is material to observe, this affidavit first introduced the name of De Berenger in any public document; whether it was known privately at any earlier period we are not informed, the date of it is the 11th of March. The Davidsons have informed you, that the day he finally disappeared was the 27th of February (Mr. Cochrane Johnstone having called and left a letter, for what purpose we know not, on the 26th), he appears to have very soon got to Sunderland, and might, on the 11th of March, the date of this affidavit, be reasonably supposed to have been out of the kingdom.

It is in evidence, that when De Berenger was taken, there was found in his writing-desk part of the produce of the exchange at the bank of four 100*l.* notes, two of the bank notes of 200*l.* being changed first into two 100*l.* notes, and then into ones; the whole are identified by the clerks of the bank; sixty-seven the produce of one 100*l.*; forty-nine identified as the produce of another, and seven the produce also of one of those; there are traced to him likewise a 50*l.* and a 40*l.*; the 50*l.*, traced by the evidence of Smith to-day, the evidence upon that subject

being deficient yesterday, I stopped them short, because I thought that the entry of the mere initials W. S. and 50*l.*, did not afford distinct and sufficient proof that the person meant by those initials was William Smith, and that the 50*l.* was a sum which had passed between Wm. Smith, Mr. De Berenger's servant, and him, and that the evidence was deficient in that respect. The principal part of these are the produce of the draft of 470*l.*, and a fraction, which was changed as will appear in the evidence, when that part of it is stated to you. Originally the 470*l.* draft had been laid down before and paid to Lord Cochrane; it had afterwards got into the hands of Mr. Cochrane Johnstone and of Mr. Butt, for there appeared to be such a communication between the parties, that you cannot say from whom ultimately it proceeded, but it had been in some sort in the hands of all, and the produce of this check, originally paid to Lord Cochrane, is found in the desk of this man.

I have been led aside by reading the affidavit to these observations on the dates. To return, the affidavit was, as I have already stated, sworn March 11th, 1814, by which time it might well be supposed that De Berenger, if he made proper speed, had got out of the kingdom. The affidavit proceeds thus: 'I, Sir Thomas Cochrane, commonly called Lord Cochrane, having been appointed by the Lords Commissioners of the Admiralty to active service (at the request, I believe, of Sir Alexander Cochrane) when I had no expectation of being called on, I obtained leave of absence to settle my private affairs, previous to quitting this country, and chiefly with a view to lodge a specification to a patent;' there is no doubt that patent exists, and that there is a true transaction as to the patent; but whether it be introduced here as a colour, and to draw off your attention from other matters, is another point. 'That in pursuance of my daily practice of superintending work that was executing for me, and knowing that my uncle, Mr. Cochrane Johnstone, went to the City every morning in a coach, I do swear on the morning of the 21st of February (which day was impressed on my mind by circumstances which afterwards occurred) I breakfasted with him at his residence in Cumberland Street about half-past eight o'clock, and I was put down by him (and Mr. Butt was in the coach) on Snowhill about ten o'clock,' therefore these three gentlemen, who had so much to do on that day, were brought together, and had an opportunity of communicating together at least at this time. They go on to the City together after having, it may be supposed, had so much of

communication together as was necessary for the current business of the day, whatever that business was. 'I had been about three-quarters of an hour at Mr. King's manufactory, at No. 1 Cock Lane, when I received a few lines on a small bit of paper, requesting me to come immediately to my house, the name affixed, from being written close to the bottom, I could not read;' that was certainly a very pointed observation which was lately addressed to you, by the learned Counsel for the prosecution, that the name which he says he could not read would not in all probability have been written at the bottom, for he had finished the note once, and when it was sent back to him there was space enough still left for him to write something more; for the servant says he added something more afterwards, therefore it was not from its being crowded at the bottom, unless it be that he had not signed any name till quite the last, and after he had written the addition which Lord Cochrane mentions, 'the servant told me it was from an army officer, and concluding that he might be an officer from Spain, and that some accident had befallen to my brother, I hastened back and I found Captain De Berenger.' Now certainly his anxiety about his brother, if true, was a very good motive for his returning, but I addressed some questions to the witness on this subject; I thought it very likely if that was the motive which induced Lord Cochrane to return, that he should have disclosed that motive to the person who brought the note, especially as he was a servant who had been seventeen years in the family; nothing could be more natural than to say, 'Thomas, I hope there is no bad news from my brother, your old master;' no such thing passes, but—'Well, Thomas, I will return,' is all that he says to him; he does not mention anything about any apprehension as to his brother. His brother, as appears by the returns which have come home, had been wounded, or was upon the sick list; but it does not appear that he had then actually received any communication upon that subject; and which, if he had received any such, might have been expected to be proved, and might easily have been so. That his brother was in fact upon the sick list appears, but not that he then knew him to be so; nor did he intimate to the servant that came one word of apprehension about his brother, or any mention of his health or of him, but came back immediately on receiving this note. Now, with the acquaintance he had with De Berenger, no doubt such application had been made to get him appointed as is proved; and he must have been, one would suppose, familiar with his hand-writing; and, *if so*,

he could have had no doubt who was the person from whom he received this note, and whom he was to meet when he should get home; but he says, 'I found Captain De Berenger, who, in great seeming uneasiness, made many apologies for the freedom he had used, which nothing but the distressed state of his mind, arising from difficulties, could have induced him to do; all his prospects, he said, had failed, and his last hope had vanished of obtaining an appointment in America. He was unpleasantly circumstanced on account of a sum which he could not pay; and if he could, that others would fall upon him for full 8,000*l.* He had no hope of benefiting his creditors in his present situation, or of assisting himself. That if I would take him with me, he would immediately go on board and exercise the sharp-shooters (which plan I knew Sir Alexander Cochrane had approved of); and there is no doubt that Sir Alexander Cochrane had, on some application of Mr. Cochrane Johnstone or Lord Cochrane, applied for him, but that for reasons not communicated to us, such application had not been successful, and it had not been thought fit to appoint him.

Then he says, 'That he had left his lodgings, and prepared himself in the best way his means allowed. He had brought the sword with him, which had been his father's, and to that and to Sir Alexander he would trust for obtaining an honourable appointment. I felt very uneasy at the distress he was in, and knowing him to be a man of great talent and science, I told him I would do everything in my power to relieve him; but as to his going immediately to the *Tonnant*, with any comfort to himself, it was quite impossible; my cabin was without furniture; I had not even a servant on board. He said he would willingly mess anywhere; I told him that the ward-room was already crowded; and besides, I could not with propriety take him, he being a foreigner, without leave of the Admiralty. He seemed greatly hurt at this, and recalled to my recollection certificates which he had formerly shown me from persons in official situations; Lord Yarmouth, General Jenkinson, and Mr. Reeves, I think, were amongst the number; I recommended him to use his endeavour to get them or any other friends to exert their influence, for I had none; adding that when the *Tonnant* went to Portsmouth I should be happy to receive him; and I knew from Sir Alexander Cochrane that he would be pleased if he accomplished that object; Captain Berenger said that not anticipating,' now this is very material, 'any objection on my part, from the conversation he had formerly had with me, he had come away with intention

to go on board and make himself useful in his military capacity; he could not go to Lord Yarmouth or to any other *of his friends in this dress*;' what is the dress that Lord Cochrane represents as then belonging to him? a green dress? had he a green dress? he must have had that dress with him whatever it was in which he had come in the coach. He says that would excite suspicion; why, if he had really a green uniform, that would not have excited observation or suspicion; it was the very uniform he ought to have worn; but if it was that in which he got out of the coach, and it does not appear that he had any means of shifting himself; if he had on an aide-de-camp's uniform with a star, and so presented himself to Lord Cochrane, how could Lord Cochrane reconcile it to the duties he owed to society, and to Government, and to his character as a gentleman and an officer, to give him the means of exchanging it? It must be put on for some dishonest purpose; this red coat and star and all this equipment must have appeared most extraordinary, and must have struck Lord Cochrane most forcibly if he were not aware of the purpose for which it was used; 'that he could not go to Lord Yarmouth, or to any other of his friends in this dress, or return to his lodgings, where it would excite suspicion (he was at that time in the Rules of the King's Bench); but that if I refused to let him join the ship now, he would do so at Portsmouth; under present circumstances, however, he must use a great liberty and request the favour of me to lend him a hat to wear instead of his military cap. I gave him one which was in a back room, with some things that had not been packed up; and having tried it on, *his uniform appeared under his great coat*; I therefore offered him a black coat that was lying on a chair, and which I did not intend to take with me. He put his uniform *in a towel*, and shortly afterwards went away.' If he put that uniform in a towel, he must have pulled it off his back, for it was on his back before, and then Lord Cochrane, one would think, must have seen him do it. What business had this man with a red aide-de-camp's uniform? He had no business to wear any such garb; he was almost as much out of his proper character as I should be if I appeared habited in the particular dress and professional habits of an officer or a clergyman. But it does not rest there, for he himself lends to this person the immediate means of his concealment, he lets him have a hat instead of his *laced cap*. And what had such a cap to do with a sharp-shooter's uniform? Upon seeing him appear habited as all the witnesses represent him to have been in his way from Dover to Green

Street, Grosvenor Square, would not anyone who had known him before have immediately exclaimed, Where have you been, and what mischief have you been doing in this masquerade dress? It is for you, gentlemen, to say whether it is possible he should not know that a man coming so disguised and so habited, if he appeared before him so habited, came upon some dishonest errand, and whether it is to be conceived a person should so present himself to a person who did not know what that dishonest errand was, and that it was the very dishonest errand upon which he had been so recently engaged, and which he is found to be executing in the spreading of false intelligence, for the purpose of elevating the funds, if he actually appeared to Lord Cochrane stripped of his great coat, and with that red coat and aide-de-camp's uniform, star and order, which have been represented to you, he appeared before him rather in the habit of a mountebank than in his proper uniform of a sharp-shooter.

He says, 'he went away in the hackney coach I came in, which I had forgotten to discharge in the haste I was in. The above conversation is the substance of all that passed with Captain De Berenger, which, from the circumstances attending it, was strongly impressed upon my mind; I most positively swear that I never saw any person at my house resembling the description, and in the dress stated in the printed advertisement;' which I suppose will be read, 'of the members of the Stock Exchange; I further aver that I had no concern directly or indirectly in the late imposition, and that the above is all that I know relative to any person who came to my house in uniform, on the 21st day of February before alluded to; Captain De Berenger wore a grey coat, a green uniform, and a military cap;' now did he wear a green uniform? They are at issue upon the dress then worn by him; if he had not this dress on, what other had he? And if he had the green one on, what true or probable reason existed for the change of that? the unfitness of appearing in it before his commanding officer, Lord Yarmouth, is negatived by Lord Yarmouth himself; supposing him to have appeared in any disguise, it is the conduct of an accomplice, to assist him in getting rid of his disguise, to let a man pull off at his house the dress in which (if all these witnesses do not tell you falsely) he had been committing this offence, and which had been worn down to the moment of his entering the house, namely, the star, a red coat, and appendant order of masonry, seems wholly inconsistent with the conduct of an innocent and honest man, for if he appeared in such a habit, he must have appeared

to any rational person, fully blazoned in the costume of that or of some other crime, which was to be effected under an assumed dress, and by means of fraud and imposition; this circumstance is therefore very important for your consideration; the judgment to be formed upon it must rest with you, and you will no doubt consider whether, supposing him to have appeared before Lord Cochrane, dressed as the witnesses represent him to have antecedently been, the circumstance of his so appearing in a dress proper for the commission of such a fraud, as appears to have been committed on that day, by attracting a false belief of the person being a messenger bringing great public news, coupled with the fact of his afterwards walking off with that dress in a bundle, instead of having that dress upon his back, and also with the evidence given in order to prove a connexion with the notes afterwards found in De Berenger's desk, you are not satisfied that he was privy to and assisted in the scheme of effecting a deception upon the public.

Gentlemen, I have taken this subject a little out of its place in adverting to it here. To return—

Mr. Lavie says, 'I received the parcel (*that produced by Odell*), in the Stock Exchange room, in which Mr. Baily and Mr. Wade were present.'

Mr. Wade says, 'I am Secretary to the Stock Exchange; in company with other gentlemen, I received from Odell a bundle, said to be found in the river, which was given to Mr. Lavie; the star was then in two pieces, and was afterwards sewn together, for the purpose of being exhibited.'

Then Solomons, who originally sold the dress, is called; he says, 'I am a military accoutrement-maker; we have a shop at Charing Cross, and another at New Street, Covent Garden. On Saturday the 19th of February,' the very day before this is put into execution, with the intervention of the Sunday, 'a military dress was purchased at my house; a military great coat and foraging cap made of dark fur, with a pale gold border; I have since had a cap and a coat made exactly resembling them, as nearly as I could possibly recollect.' He had them made, I suppose, in order to exhibit them. 'The person purchased at our house in New Street, something which came to Charing Cross shop, as being ordered at New Street, and the person came to Charing Cross and took it away; there was a military great coat, a military staff coat, such as persons on the staff wear, the uniform of an aide-de-camp. I have examined the fragments, the star and the badge; I believe those to be the same, we had the very fellow

star to that; except those two, I do not know that I ever saw any star like them, the badge I did not take much notice of;' that is the silver masonry ornament. 'I have examined these fragments, and they appear to be part of the same materials, the same description of embroidery, the description of coat; I had a conversation with respect to the great coat, and also the cap; he observed that they were wanted for a person who was to *perform the character of a foreign officer*, they were to be sent into the country that evening, he took them away with him in a coach, he had a small portmanteau with him;' you remember there is a leather portmanteau spoken of; 'he did not beat me down in the prices, or make any observations about money, but merely paid for them. I was conversing with him for a short time, I have been since introduced to a person at the Parliament Street coffee house; I cannot undertake to say it was the person, in point of appearance he resembles him, except that the person I served had whiskers.' Now, if you recollect the history of the whiskers, it is established that he had worn whiskers, though the woman who endeavoured to make us believe that he slept at home on the Sunday night said she had not so much as observed (though she had been his servant two years and a half) whether he had any whiskers. It appears to me that is a circumstance in the countenance of a person which one would very much observe; he says, 'the person I saw in Parliament Street had not whiskers;' he then looked at Mr. De Berenger, and said, 'this is the person I was introduced to at the coffee house in Parliament Street; I really cannot undertake to swear that he is the person, the gentleman represented himself to be Mr. Wilson, was dressed in a different manner, he had black whiskers, and from that circumstance I could not possibly undertake to swear it was the same person, it resembles the person, except that the person I served had whiskers; I cannot say that I believe it is the person, or that it is not.'

Mrs. Abigail Davidson, the woman with whom Mr. De Berenger lodged, is then called; she says, 'In the month of February last I resided in the Asylum Buildings, near to the Asylum; the house is within the Rules of the King's Bench. Mr. De Berenger lodged with me; he finally quitted my house on the 27th of February, on a Sunday. I do not remember where he was on the Sunday before that; I did not see him on the morning of that Sunday; I cannot say whether he slept at home at night; we never attended to the door; I usually heard him in the morning; I did not hear

him as usual on the morning of the 21st; I used to hear the bell ring for the servant, more than once; he occupied the whole of the upper part of the house, I and my husband had the two parlours. I heard him also occasionally playing the violin and trumpet, and he used to walk about; he then wore whiskers. I generally heard his bell; I did not see him come home on the Monday; I saw him in the evening, about half-past five; I had heard him in the afternoon. He quitted my house on the Sunday after; I remember a gentleman calling on the Saturday night, the day before he quitted, with a letter; I have since seen that gentleman again, I saw him at the Temple; Mr. Lavie was then present. I cannot say that I positively knew the gentleman, but I think it was the same that I had seen deliver the letter on the 26th of February. Mr. De Berenger had two servants of the name of William Smith and his wife; when he dined at home, his servants attended him; on Sunday the 20th, I cannot say whether he dined at home; his usual dinner hour was about four. I think his servants went out about two or half past on that Sunday.' If you remember, Smith and his wife swear to De Berenger's going out about four on that Sunday, and Smith says that he and his wife went out soon after; this woman swears that they went out at two or half-past. 'There was a private place where the key always hung, for the accommodation of Mr. De Berenger, and as the key was always under the care of Smith, I did not see where the key was put that evening.'

On her cross-examination she is asked, what Sunday it was that these servants went out to dinner at two or half-past, she says, 'On Sunday the 20th, about eleven o'clock, I heard my husband observe De Berenger was gone out; I cannot say whether he slept from his bed on Sunday the 20th; I sleep in the back parlour. I have heard him trumpet by nine o'clock, not by seven. I had no call to look after him on any morning.'

Upon her re-examination she says, 'My husband observed to me, "Our lodger has gone out with a new great coat on."' So that he is, for the first time, observed by them in that great coat on that Sunday.

Mr. Lavie says, the person Mrs. Davidson saw at the Temple getting out of the hackney coach, was Mr. Cochrane Johnstone, that she said she believed that the person who was striking the jury, and who was Mr. Cochrane Johnstone, was the person who brought the letter on the Saturday.

Mrs. Davidson, on being called again, and further cross-examined, says, 'Mr. Lavie desired me to attend to see a gentle-

man; I was told Mr. Cochrane Johnstone was to be there; I will not swear that the person who left the letter was Mr. Johnstone. I had a conversation about the person with Smith, Mr. De Berenger's servant.'

Then Mr. Launcelot Davidson, the husband of the last witness, is called; he says, 'Mr. De Berenger lodged in my house; he quitted my house finally on Sunday the 27th of February. The Sunday before that, I saw him go out before eleven (that was on Sunday the 20th); I had been out before; I was waiting to hear the Asylum clock strike eleven; I saw him go out, I had seen him come in ten minutes before; when he came in, he had a plaid cloak on, which he had worn the winter; when he went out, he had a great coat of that colour (pointing to the grey coat produced by Solomon); as he went, I observed to my wife, "There goes our lodger, he has a new great coat on;" he did not come home again at all during that day, that I saw or heard; I did not see or hear him the next morning before nine; I go out at nine. I generally used to hear him before that time walking about, or ringing for his servant. I made an observation upon his servants going out on the Sunday at two; I do not think they were at home *at four o'clock*, which was Mr. De Berenger's usual dinner hour; the man servant always attended him when he dined, and the woman dressed his dinner; he did not dine at home on that Sunday. A conversation took place with the Smiths afterwards, respecting that Sunday night.' Now to be sure it is a most obvious thing, that if he had been in town at that time, nothing could be so easy as to have proved where he dined; and probably those who might have been called to prove that fact, would have been persons of a better description than Donithorne, Tragear, and the other persons called to give an account of him on that day.

On cross-examination he says, 'I had nothing to do with his domestic life. He made a loud rap at the door, and had few visitors. I am a broker, and clerk of a broker, and out a considerable part of the day.'

Gentlemen, the next evidence applies to the Northfleet part of the transaction.

Mr. Vinn says (and to be sure it is an odd story he tells); 'In consequence of a note left at my house, dated the 14th of February last, I went to the Carolina coffee-house on the 15th, where I met Mr. M'Rae, in company with an elderly gentleman; he desired me to sit down. I had known M'Rae before for some years; he was standing near the door, and in about seven or ten

minutes he came and joined me; he told me he had known me a long time, and that he thought he had now an opportunity of making my fortune; that he knew from the knowledge I had of languages, I should have an opportunity of benefiting others and myself; I asked him what the object was; he said not to travel abroad, but probably at home, and that almost immediately; that it was a scheme that he had in contemplation, to be employed by men of affluence and consequence, and that no man was more competent than myself; he said there was no moral turpitude in the business, but that it was practised daily by men of the first consequence.' What M'Rae says, is, you will observe, evidence criminally only as against himself; because what he *confesses*, is not evidence to affect others. What he *does*, may affect others as parties to the conspiracy; but what he *says*, cannot affect others; 'that it was only biting the biters, or in other words, a hoax upon the Stock Exchange; and that by going down to Dartford, Folkestone or Dover, I should receive instructions.' So that in his communications, Dover is mixed with Dartford, as the probable destination to which the parties to this business might be sent; 'that it was necessary to have for himself and me, two dresses of French officers;' so that dresses similar to that in which the Dover plan was executed, were in his contemplation. 'I there stopped him, and asked him whether he really meant to be employed in this transaction; to which he replied, certainly; and that I should be in the first place remunerated, and ultimately have a fortune made me: I replied with indignation, that I would as soon be concerned in a highway robbery; that I thought he had known me better; I expressed myself rather loudly, as offended at it; he endeavoured to hush me, saying, hush! that we might be overheard. He took me up Cornhill, where I left him; I told him if he would go with me to another coffee-house, I would introduce him to a person who, though I would not undertake the business, might do it. I took him there; it was the Jamaica coffee-house; there was a young man there, to whom I was about to introduce him; but he turned round suddenly, and I did not: upon M'Rae returning, he asked me whether I would not give him in writing some French sentences, sentences such as Vive le Roi, Vives les Bourbons, Vive Louis Dix-huit; I gave him those terms in writing;' so that he might play off those terms, to assist in the prosecution of this business. A letter is then shown to the witness; he says 'this is the letter I received from M'Rae; it is his handwriting.' The letter is in these terms,

'Mr. Vinn, please to meet me at the Carolina coffee-house, about eleven to-morrow, upon very particular business, yours,' so and so.

On his cross-examination, he says, 'I am an accountant; I have been acquainted with M'Rae five years and a half. I never bought and sold as a broker; I had been in business myself; there was no person to hear the conversation I have stated. I communicated this at the Stock Exchange to Mr. Rothery, and mentioned it publicly on the 15th, and that I had refused it; my object was not to get another person really to undertake the business, but to furnish myself with a confirmatory witness.'

Sarah Alexander is called, and she proves very material circumstances as to the preparation for this Northfleet expedition, to take place at the same period of time as that from Dover. She says, 'I live at Fetter Lane; I have lived there ever since last September. I know Mr. M'Rae; he lodged on the same floor that I did; he is a married man; his wife lived with him; on Saturday the 19th of February, he came to my room.' The other military uniform, you will recollect, was purchased on this very same day for the Dover scheme. 'He brought a small parcel, and gave it to his wife; he said it was of value, and bade her take care of it. He went out on Sunday the 20th; he went out between ten and eleven, and returned before twelve, and brought with him two coats and two opera hats; they were inclosed in a bundle; I saw the coats; they were very dark blue, done with braiding; they were officers' coats; the flowers were of worsted embroidery; they were flat hats; one coat was lined with white silk; one coat and one hat was better than the other; the one had a brass plate and gold tassel; he put them on, and walked about, and asked whether he did not look like an officer.' So that he was representing and playing this character beforehand. 'He went out again, and came home before one, and brought some ribbon with him; he wanted two cockades to be made round; he applied to his wife; his wife asked what he was going to do with them; he said, to deceive the flats.' So that he not only exhibits the materials by which he was to effect the fraud, but avows the object, 'to deceive the *flats*;' that is, I suppose, *credulous persons*. 'He put the cockades into his pocket, and the hats and coats in a bundle, and went out, saying he must be at Billingsgate, to start at two by the Gravesend hoy. The next day, I met him a quarter before two in Cursitor Street; he was dressed the same as he went out, in his own clothes; he had apparently the

same bundle; he brought home one coat and one hat; the best coat and hat were in the bundle; he said he had slept at Northfleet, but he had the appearance of not having been a-bed at all; he brought home the cockades in his pocket; he appeared very tired. His wife unripped the cockades, and took the white lining out of the coat, and carried it to the dyers to be dyed black.' Then she says, 'From December to February we lodged together; we kept but one fire, and lived a good deal together; he was in a state of great indigence, and never had any money except a shilling or an eighteen-penny piece now and then; after the Northfleet expedition, he had a 10*l.* and a 1*l.* note, and the day before he finally left his lodgings, he had three 2*l.* notes; he finally left his lodgings on the 2nd or 3rd of March. On Sunday the 27th of February, he bought a new coat and a new hat; on Monday the 28th, he said he was to have 50*l.* for what he had done; he wished when he went away finally, for nobody to know where he was going; and I wished not to know.' On the 2nd or 3rd of March this gentleman disappears as the other De Berenger had done on the 27th; such were the nearly contemporaneous and similar actings of these parties. Both of them on Saturday are making preparations for a scheme which is to operate on London at the same period; you will consider whether there was not a communion of purpose in these persons, whether they did not conspire to produce a common end, though they might not particularly know how the others were co-operating with them at that time; in short, whether there might not be one master workman, who played the puppets in both directions. Then you have the course of the Northfleet people.

Philip Foxall (the next witness) says, 'I keep the Rose Inn at Dartford.' A letter was shown to him; he says, 'I received that letter from Mr. Sandom, I knew him by his frequently having chaises from my house.' That note is one in pencil, ordering a chaise, 'Please to send me over immediately, a chaise and pair to bring back to Dartford, and have four good horses ready to go on to London with all expedition.' 'I sent a chaise over to Northfleet, and had horses ready, as the letter advised me; the chaise on its return drove furiously into my yard, with Mr. Sandom and two gentlemen with white cockades, and large flat hats, quite plain, except white ribbon or paper, and blue clothes; I cannot say whether they were plain. I forwarded them with four horses. I asked Mr. Sandom whether they would breakfast; he said "No, they have breakfasted at my house, they have been out in an open boat all night, and are very much

fatigued." I asked, "Who are they?" Sandom said he did not know, but they had news of the utmost consequence, and begged I would let them have good horses; they ordered a chaise and horses for Westminster.'

On his cross-examination he says, 'I think I must have received the note about seven o'clock in the morning; the chaise with Sandom and the other gentlemen came back in about an hour.' I was surprised to see it in so short a time. I only know Sandom by his having chaises at my house to Northfleet. I understood he lived there: he had been in the habit for nine months before that of occasionally having horses from my house.' This evidence introduces Mr. Sandom in this chaise, with these persons in this assumed garb, and presents him therefore as acting in this purpose.

Foxall Baldry is next called. He says, 'I am a post-boy at the Rose at Dartford; on the morning of the 21st, I recollect a chaise coming from Northfleet to our house; I have seen one of the gentlemen since; I did not know Mr. Sandom personally at the time; he was one of those persons; I did not know the other two; I drove the leaders. Just as we were coming to Shooter's Hill, Mr. Sandom got out of the chaise, and said, "Give your horses their wind, and when you get up the hill, make the best of your way; I will give you twelve shillings apiece for driving." My fellow servant ordered me to go over London Bridge, down Lombard Street, along Cheapside, over Blackfriars Bridge, down the New Cut, and when I was in sight of the Marsh Gate, I was to stop.' That was the line they were to take, they were to come through the town with these laurels and white cockades, which would attract attention; and it appears that this chaise came about two hours after the other, so that when the rumour began to be languid, this would revive and also strengthen it, the same report reaching London through two channels that morning. 'I took that course; Mr. Sandom had on a brown coat, and the other two were in blue coats I think; the horses had laurels upon them; when I was in sight of the Marsh Gate I pulled up, the parties took off their cocked hats, put them into their handkerchiefs, put their round hats on, and they walked away.' It had answered their purpose, they had exhibited themselves in the City, and they then resumed their usual habits. 'I got to the Marsh Gate about eleven o'clock, I should think; Mr. Sandom did not give us any thing at that time, nor pay for the chaise; he asked what house we stopped at; I told him the Bull, Kent-street end, and he came to us there, and gave my fellow

servant a 1*l.* note and the rest in silver; the chaise he did not pay for.' Whether it is yet paid for, nobody has informed us.

Mr. Baily is then called again, and he says, 'In consequence of inquiries that had been made, Mr. Holloway and Lyte attended the committee of the Stock Exchange. Holloway denied any knowledge of the transaction, after which he came and confessed that he had planned that plot or participated in it; he said that he had done it with a view to obtain money by a rise in the public funds; and Lyte said that he had been employed by Mr. M'Rae, at Mr. Holloway's solicitation. Lyte stated that he and Sandom and M'Rae rode in the post chaise from Northfleet to Dartford, and afterwards from Dartford to London; there were present at this time, Mr. Wakefield, Mr. Lavie, and Mr. Chaumette. Holloway and Lyte came together, and what Lyte stated, was in the presence of Holloway; he (Holloway) stated that he was not aware of the serious turn it would take; but finding that it had taken so serious a turn, he had come forward and confessed it, in the hope that the Stock Exchange would not pursue it to extremities. He was asked, whether he had any connection with Lord Cochrane, Mr. Cochrane Johnstone, or Mr. Butt, and he denied that he had;' and certainly, if his denial was complete evidence of the fact, it would be proper for your consideration in that respect; but what he admits is to be taken as against himself, subject to your discreet consideration of the whole of the circumstances; and you will, upon the whole, determine, whether these defendants conspired with the rest in the promotion of the same end, accomplished by the same or similar means, about the very same period. Mr. Baily adds, that nothing he supposes, but the publicity of the measures, induced Holloway to come forward; and that he believes Holloway stated, that he would communicate all he knew of the business, because M'Rae had offered, for a large sum of money (I believe that sum was mentioned to be ten thousand pounds), to come forward; he denied also any connection with De Berenger.

Several brokers are then called. Mr. Robert Hichens, one of them, says: 'I have known Mr. Cochrane Johnstone for several years; I have never done business for him till the present year. From the 8th of February to the 19th I made various purchases for him; the balance was 250,000*l.* omnium at the leaving off of the business on Saturday. I furnished Mr. Baily with an account of the purchases and sales on Monday, the 21st. I met Mr. Cochrane Johnstone as I was coming out of the Stock Exchange about a quarter before eleven o'clock. I

received an order from him on the Saturday to sell 50,000*l.* at 1 per cent. profit on the Monday, and that I sold before I saw him on Monday. Now it does appear very probable that the communication this person had made at Dover might have reached town before De Berenger, for it appears, by the evidence of Wright of Rochester, that he had been called up by a post-boy of his brother's at Dover, who had probably brought before De Berenger's arrival at Rochester some of the news which De Berenger had announced at Dover, for Wright of Rochester addresses him as a person whom he was *led to suppose* was the bearer of some very good news. Some such cause appears to have operated, so that the stocks were at 29 early in the morning. On the Saturday he ordered me to sell a certain quantity at an eighth per cent. more. I sold the whole of it that day by his directions at 29, 29⅛, 29¼, 30¾, and 30⅞. I disposed of the whole which Mr. Cochrane Johnstone held at one or other of those prices.'

Then, on cross-examination, he states Mr. Cochrane Johnstone's balance on this and different days, and it appears that they had been dealing in the funds, with a view to this particular day. For a length of time they all had their hands full of omnium and consols, and the omnium having obtained a price which would allow of a profit, all was sold, and the object appears to have been as much to raise the price a little, so as to get out without present loss, as to gain a profit. This is the substance of the evidence of the different brokers, who all prove the quantities of stock, and that they were both buyers and sellers. The persons who were interested to prevent a depression must feed the market occasionally as a buyer, I should imagine, though I am not very conversant in these things.

Mr. Baily then states in substance what, from an inspection of the accounts, with which he states himself to have been furnished by the several brokers, Hichens, Fearn, Smallbone, and Richardson, it turns out, had been the balances of the three persons, Mr. Cochrane Johnstone, Lord Cochrane, and Mr. Butt, in the different speculations they had, which had lasted for a considerable time. From the month of November, according to Mr. Fearn, down to that day, and particularly from the 8th to the 21st of February (the particulars of which are specified in this paper), they appear to have had a larger balance, at least Mr. Cochrane Johnstone appears to have had on an antecedent day, than he had on the 21st of February; but it appears as if they not only were speculating on what they were buying, but

they were speculating to such an amount that unless they got rid of it, every one of them might be ruined; and they had determined, it should seem, on getting a profit of about 1 per cent. to sell the whole. It turns out that on the 21st of February, as appears by this paper, 420,000*l.* of omnium and 100,000*l.* of consols belonged to Mr. Cochrane Johnstone, 139,000*l.* of omnium to Lord Cochrane, and to Mr. Butt 200,000*l.* omnium and 178,000*l.* consols. It appears that he sold on that day 24,000*l.* more of omnium than he had, and 10,000*l.* of consols short of what he had, and with those differences merely, they, on that day, evacuate themselves of the whole, and by Mr. Baily's account you will see there was a profit upon the whole. The gross amount of the balances on all three was 759,000*l.* omnium and 278,000*l.* consols, which would make, he says, if the whole amount were reduced to consols and calculated as consols, 1,611,430*l.* 3*l.* per cents. Of that quantity of stock they were holders on the 21st of February. When I have stated the total amount as being 1,611,430*l.*, 3 per cents., that is, supposing the omnium was calculated in terms of consols; he says the fluctuation of only *an eighth* would, upon this large amount, have been a profit of above 2,000*l.* The profit upon the sales of that day was, he says, 10,450*l.* Lord Cochrane's share of this profit was, as he computes, 2,470*l.*; Mr. Cochrane Johnstone's, 4,931*l.* 5*s.*; and Mr. Butt's, 3,048*l.* 15*s.* He says: 'If no news had arrived on the 21st, no person could have sold this large quantity of omnium and consols without very much depressing the market;' therefore it was necessary, it should seem, that there should be good news to keep up the market, that great holders of stock might get out of the adventure without loss. 'I should think the news arrived in about half an hour after ten. Business begins at ten. The news had a gradual effect. As the report was believed, the first decline was about the middle of the day.' He says: 'The recovery of the funds was generally attributed to the chaise passing through the City;' therefore, the one chaise was, in point of effect, a good auxiliary to the other, and the blue coats and the worsted embroidery aided, it should seem, the effect of the red coat and the gold lace; and you will consider whether it was not all part of the same transaction. 'I think (he says) the chaise through the City carried it to its highest amount. I should think (he says) the accounts were time bargains, from the magnitude of the sums, and, it should seem, they were so; but though the gain which these parties made might not be a legitimate gain arising on legitimate

bargains, the evil of this to the fair dealer is palpable, and the argument of its invalidity is a sword with a double edge; its operation, at any rate, is to cut very deeply into the interest of innocent dealers in the funds.

Mr. Wetenhall then speaks to the different prices of the stock on that day. He says: 'I collect the prices at different times of the day, and furnish the bank with these papers. Omnium left off at 26¾; that was the money price. The time price is generally 1 per cent. higher. It commenced on Monday at 26½. On news arriving it rose to 30¼, fell back to 30, and afterwards to 28. After the stocks had begun to fall, on a report of a chaise having come through the City, they rose again.

Pilliner, who was a stockbroker, says: 'Before the 21st of February I had made purchases for Holloway to the amount of 20,000*l.* omnium and 20,000*l.* consols. I sold for him 20,000*l.* omnium and 14,000*l.* consols. I saw Holloway on the morning of the 21st.' He declines answering whether they were time bargains or for money. 'He desired me to sell his stock, to sell all about the middle of the day. I had acted as broker for him two years.'

Then Mr. Steers says: 'I am broker to the Accountant-General of the Court of Chancery. On Monday, the 21st of February, I made purchases, as broker for the Court of Chancery, to the amount of fifteen thousand and odd. I bought at 71⅛ consols. That was the price about eleven o'clock, when the funds had considerably risen. That was all that I did that day for the Accountant-General. I can speak to nothing else that day. I purchased 6,894*l.* 11*s.* 4*d.* consols for the Accountant-General on Saturday at 70.' Therefore the difference between 71⅛ and 70 seems to have been occasioned by the operation I have before stated to you.

Mr. Wright is next called; he appears to have printed this affidavit by Lord Cochrane's direction on slips for the newspapers; he says, 'In a conversation with Lord Cochrane, when he was giving me directions, he said, I once saw Captain De Berenger at dinner at Mr. Basil Cochrane's. I have no reason to think that Captain De Berenger is capable of so base a transaction;' giving his own name to the transaction; 'but if he is, I have given the committee of the Stock Exchange the best clue to find him out;' he had given them a clue, by giving his name in the manner he has done in his affidavit; but it would have been very ineffectual if De Berenger had carried away his own

person previous to that; but it was by accident that he was found at Leith.

Mr. Le Marchant is next called; there is a great deal, he says, which is no evidence against anybody but the person who relates it, viz., Captain De Berenger; and I do not think it at all necessary to state it; he does himself no credit, and he is a person, on the statement of the letters which have been read, whom Government might do very well in letting ride at anchor here without going abroad. He says, however, 'I became acquainted with Captain De Berenger about eighteen months ago; our acquaintance continued until the 16th of February; from the 10th to the 16th of January he spent his evenings with me occasionally; I learnt that he was connected with Lord Cochrane and Mr. Cochrane Johnstone; he stated that he was about to go to America, under the command of Lord Cochrane; upon his mentioning this, I put the question to him, how he could possibly do it under the embarrassments that he lay under, upon which he answered that all was settled on that score; this conversation passed about the 14th of February; he said, that for the services he had rendered to Lord Cochrane and Mr. Cochrane Johnstone, whereby his lordship could realise a large sum of money, by means of the funds or stocks, his lordship was his friend, and had told him a few days before that he had kept, unknown to him till that period, a private purse for him—De Berenger. He frequently mentioned particular intimacy of dining, breakfasting, and supping with his lordship; he said in this purse he had deposited a certain percentage out of the profits which his lordship had made by his stock suggestion.' This is only what De Berenger says, and the declarations of persons are evidence only against the parties themselves who make them, and do not prove the fact as against anybody else. 'I afterwards heard of the events of the 21st of February, and made known my suspicions that Captain De Berenger had been active in them, to Captain Wright, of the East India Company's service, and Lieutenant Taylor, of the 22nd Infantry;' he said the percentages were for the benefit of his (De Berenger's) ideas he had given to Lord Cochrane and Mr. Cochrane Johnstone as to stock transactions; it applied to both.

Upon his cross-examination, he says, 'I have been corresponding with Lord Cochrane; I am not now a prisoner in the King's Bench; I have never had any communication with Lord Cochrane but in writing; my promotion is not suspended; I hold the situation of Secretary and Register to the Court of Antigua

and Montserat; I have been prevented from going out in consequence of being compelled to give my evidence either at this court or some other court, and only for that purpose; this is my handwriting; most undoubtedly I must have been compelled to give this evidence upon oath if called upon in a court of justice; I do not give my evidence from resentment, or from any refusal to lend me money; I know one Palfreyman,' *he* is not called. 'I am persuaded I never represented myself as having any resentment against Lord Cochrane to Mr. Palfreyman, nor said to him that I would be Lord Cochrane's ruin;' and it is not proved that he did. 'I never told him that I would assist the Stock Exchange; I have a very slight acquaintance with Mr. Palfreyman. The conversation with De Berenger was about the 14th of February; he mentioned to me that he had expectations of getting some employment in America, to serve under Lord Cochrane; he particularly wished to be employed, that he might be useful in drilling the sharpshooters, and said other things of that sort; I had a very high opinion of him, as being acquainted with the service; he was adjutant for a number of years in the Duke of Cumberland's sharpshooters. I do not know of his making preparation to go to America at that time, if he should be successful in procuring the appointment he was soliciting.

Upon his re-examination, he says, 'The Stock Exchange applied to me to give them information, and sent me a subpœna after Lord Cochrane's publication.'

The Honourable Alexander Murray is called: he says, 'I am not at present an officer in His Majesty's service, I am now in the King's Bench; I have been acquainted with Captain De Berenger a year and a half; I was introduced to him by Mr. Tahourdin, who is my solicitor, and likewise Mr. De Berenger's; we were frequently together; when I first went over to the Rules of the Bench, I lodged with Mr. De Berenger in the same house for about one month; towards the end of January or beginning of February, I had a conversation with him about a pamphlet that Mr. Harrison was writing respecting the trial between Mr. Basil Cochrane and Mr. Harrison; Captain De Berenger was, I knew from himself, employed in planning out a small piece of ground for Mr. Cochrane Johnstone; he said that he had a plan in view, with Lord Cochrane and Mr. Cochrane Johnstone, which, if it succeeded,' this is what De Berenger said, 'would put many thousand pounds in their pocket; I asked, "Is that the plan with regard to Ranelagh?" which it was proposed to build on Mr. Cochrane's land; and he said "No, it

is not; it is a far better plan." I knew there was a very particular intimacy between Mr. De Berenger and Mr. Cochrane Johnstone; I understood Lord Cochrane was a more recent acquaintance, but that there was some acquaintance; I understood that there was a great acquaintance between him and Mr. Cochrane Johnstone, and that he was with him almost every day.'

Upon his cross-examination he says, 'I have known Mr. De Berenger a long while; he is a man of considerable science and attainments; he had been for a considerable time before employed in drawing plans for the Ranelagh. Mr. Cochrane Johnstone has a house in Alsop's Buildings, and about an acre of land behind it, which was to be converted into something upon the plan of the old Ranelagh. As far as I have seen, I believe Mr. De Berenger to be a man of honour and integrity; I saw nothing but the most perfect gentleman during the time I lodged under the same roof.'

William Carling says, 'I am servant to the Honourable Basil Cochrane. Mr. Cochrane Johnstone and Lord Cochrane visited at my master's house, in company with Baron De Berenger, the gentleman there,' pointing to him. 'De Berenger came there to dine as a visitor; he was invited by my master. Lord Cochrane and Mr. Cochrane Johnstone dined there with him once, did not the second time; they appeared to be acquainted with him.'

Then, on cross-examination, he is asked, when this took place; he says, 'In January the first time, and the next in February. I cannot say the precise day; there was a dinner party, four or five there. Sir Alex. Cochrane and his lady there the first time; an indiscriminate mixture of company, De Berenger was one of them. I did not learn that Mr. De Berenger was going to serve in America.'

Barnard Broochooft, Clerk to the Marshal of the King's Bench, is next called. He says, 'I know Captain De Berenger. He has been a prisoner in the King's Bench prison from the latter end of the year 1812 to within a month or six weeks of the present time; he had the Rules. I missed him for some months. Mr. Cochrane, a bookseller in Fleet Street, and Mr. Tahourdin, the solicitor, were his securities for the Rules: they entered into this surety nearly two years ago. I cannot recollect seeing him on the morning of the 21st of February. The security was under 400*l.*; they generally take 100*l.* beyond the amount of the debt and costs.' So that it appears he was not

very heavily charged in debt at that time; however, his debts might be, as supposed by Lord Cochrane, 8,000*l.*

Joseph Wood, the Messenger of the Alien Office, says, 'I left London on the 4th of April in order to find De Berenger. I found him at Leith on the 8th of April; I found him in possession of a writing-desk, containing papers and bank-notes; before I parted with any of them I marked them before the Grand Jury; there were guineas and half-guineas and two napoleons in the pocket-book.' He produced two packets, and a pocket-book containing a 50*l.* bank-note, four 5*l.* notes, and two napoleons in a pocket-book. He also produced a memorandum-book and a paper of memorandums and a road-book. A memorandum is shown to Mr. Lavie, which he says he believes to be Mr. De Berenger's handwriting.

Mr. Wood says, on his cross-examination, 'I carried the box and the papers before the Grand Jury, by orders of the Secretary of State. I was subpœnaed to bring it before the Grand Jury; the seals put on at Edinburgh were taken off by order of the Secretary of State before I went before the Grand Jury; it has been in my possession ever since I took it at Edinburgh. When I went to Holland, in my absence, Mr. Tahourdin wished to see it, and Mr. Musgrave opened it for him; the seals had been opened before that time. I was absent about a week or ten days. I was present all the time it was before the Grand Jury; it was locked up with all its contents; when I went out I locked it, and left it upon the jury table; I had the key; I was present when Mr. Lavie and Mr. Wakefield, and another gentleman of the Stock Exchange, were with Mr. De Berenger the day he arrived. I was present the greatest part of the time. Mr. Wakefield went very close to Mr. De Berenger, and I declare I do not recollect any particular words; he put some questions respecting the Stock Exchange. I did not hear any names mentioned. I remember the word information, that they wanted information, but that is all I recollect. Mr. De Berenger said he was unwell, and exhausted by his journey. Mr. Wakefield conversed with him about ten minutes; I put my marks upon these things before I went to Holland.' So that his going to Holland is immaterial, for his marks put upon them before he parted with them identify the bank-notes, and the bank-clerks say they gave them in exchange for other notes.

Mr. Fearn is shown a cheque of the 5th of February; he says, 'I gave that cheque to Mr. Butt on the day of its date.' That was afterwards attempted to be proved, but it came, I think, to nothing.

Mr. Smallbone says, 'On the 10th of February I drew that cheque, which was a cheque for 470*l.* 19*s.* 4*d.* I drew it for Lord Cochrane; I gave it him on some stock account; I think Mr. Butt was in the office at the time; I feel satisfied I gave it to Lord Cochrane, and not to Mr. Butt; I did not see him hand it to Mr. Butt; I presented it to him on the table that he might see it.' The cheque is then read, it is upon Messrs. Jones, Loyd & Company, dated the 19th day of February, very shortly, that is on the Friday before the Sunday on which this person must have departed from town, it is payable to No. 119 or bearer, and is signed William Smallbone.

Then Edward Wharmby says, 'I am a clerk to Jones, Loyd & Company. I paid that cheque on the 19th of February, in one 200*l.* note, two of 100*l.* each, and a 50*l.*; the 200*l.* note was No. 634, the 100*l.* notes were, one No. 18,468, and the other 16,601, and the 50*l.* note was No. 7,375.'

Then to show that Lord Cochrane dealt with the produce of this cheque as his own, Thomas Parker, the coal merchant of Lord Cochrane, says, 'I received in payment a bank-note of 50*l.* from Lord Cochrane, which is this very note, the number of which is 7,375; I wrote on the back of the note, and that is my hand-writing.' Therefore it appears that this cheque, which was drawn for Lord Cochrane, was in the first instance for his benefit, for 50*l.* of it went to his coal merchant, and the other notes appear to have come to him, or to Mr. Butt, and the produce is afterwards found at a very critical period in the hands of this person, De Berenger, seized after he had gone from London. The cheque itself is the 19th of February; the money is found in this desk after he had gone off.

Then the bank-notes of 100*l.* each are shown to Mr. Lance; he says, 'On the 24th February I went to the bank to change some bank-notes for smaller notes, by the desire of Mr. Butt;' the notes were shown to him, and he says, 'those are the notes, I received two hundred notes of 1*l.* each for them.'

Upon his cross-examination, he says, 'I remember on the 15th of February Mr. Butt lending Lord Cochrane 200*l.*;' but on examination it turns out that he only heard it, and did not see it lent. 'I went with this cheque to get the money to Jones and Loyd's; I gave the notes of 100*l.* each to Lord Cochrane; I was not present when Lord Cochrane paid those notes back to Mr. Butt; I received those notes from Mr. Butt afterwards, and it was by Mr. Butt's desire I changed them for small notes at the bank.' Then he says, 'I advanced 450*l.* to Lord Cochrane, as

clerk to Mr. Smallbone; when he had got this cheque for 450*l.*, he wanted 200*l.* more; Mr. Butt was not present. I do not know when Lord Cochrane gave these two 100*l.* notes to Mr. Butt, which by Mr. Butt's desire I took to the bank.'

John Bilson and Thomas Northover, who are clerks in the bank, are shown the two notes of 100*l.* each; Bilson says, 'These two notes were sent for payment in the bank on the 24th of February: I have the book here in my own handwriting; they were paid in 1*l.* notes,' and he specifies the number of each; 'we have looked over the notes in De Berenger's trunk before the grand jury; here are forty-nine, part of the two hundred.'

Thomas Christmas says, 'I am clerk to Mr. Fearn; I remember being sent on the 24th of February to change a note for 200*l.*; I went to Messrs. Bond and Co.'s; that is the note I gave; I received two notes of 100*l.* each; I then took those two notes to the bank, and changed them for two hundred notes of 1*l.* each; I gave them to Mr. Fearn; I did not see what Mr. Fearn did with them; I put Mr. Fearn's name upon the two 100*l.* notes before I gave them in at the bank.' Mr. Miller, a bank clerk, produced the two 100*l.* notes, and Christmas says, 'Those are the notes.'

Mr. Fearn says, 'On the 24th of February I received from Christmas two hundred notes of 1*l.* each; I gave them to Mr. Butt, and he gave them to Mr. Cochrane Johnstone.'

Bilson and Northover, the bank clerks, say, that on the 24th of February they paid to Fearn two hundred 1*l.* notes, for two notes of 100*l.* each. Then they are shown sixty-seven of the notes of 1*l.* each, found in De Berenger's writing-desk, and they say those are part of the notes they paid to Fearn on the 24th of February.

Then Wood produces a box and two watches.

Bishop Bramley is called; he says, 'I am a watchmaker and silversmith living at Hull' (*the watches were shown to him*); 'I never sold this watch or that, but I sold a watch to the gentleman who sits there for 80*l.* 19*s.* 6*d.* on the 4th of March, and he paid me in 1*l.* bank notes; I put my own initials upon them; I should know them again' [*Miller having produced some notes to the witness*]; 'all those seven notes I received of the person I sold the watch to; I put my initials and the date upon them; we took no other Bank of England notes on that day; I received twenty in the forenoon, and the other eleven in the afternoon; and I marked them, and paid them away the same afternoon.'

Bilson and Northover are shown the seven notes; they say,

'Those seven notes were part of the two hundred notes we paid to Fearn on the 24th of February.'

Lance says, 'On the 26th of February I gave Mr. Butt a cheque on Prescott & Co. for 98*l.* 2*s.* 6*d.*; that is the cheque.'

Isherwood, a clerk to Prescott & Co., says, 'I paid that cheque I think on the date of it, the 26th of February 1814,' just before the time when De Berenger went off, 'in a 50*l.* bank-note, No. 13,396, and a 40*l.* note, No. 6,268.' A 40*l.* note and a 50*l.* note are shown to him, and to each of them he says, 'That is the note.'

John Seeks is shown a cancelled bank-note of 50*l.*; he says, 'I gave change for it, I cannot exactly recollect the day; here are some letters on the back that I know it by; I gave change for it to Mr. De Berenger's servant, Smith.'

Now there we stopped last night, upon that note, because it could not be proved that Smith, De Berenger's servant, paid it for his master; this morning it is proved by Smith that he did pay that 50*l.* bank-note to Seeks, by desire of Mr. De Berenger, therefore that 50*l.* is fixed upon him as drawn from the same source, namely, the bank-note which had come from Mr. Butt.

A memorandum in Mr. De Berenger's book, written in pencil, was referred to by the counsel, 'W. S. 50*l.*' Mr. Lavie says, 'I never saw any writing in pencil of Mr. De Berenger's, but I believe this to be his writing, it is exactly the same sort of character as the other.'

Benjamin Bray is called; he says, 'I live at Sunderland;' he is shown a 40*l.* note; he says, 'I received it from the waiter of the Bridge Inn, at Sunderland; I had seen Mr. De Berenger at Sunderland previous to that; I gave the waiter six 5*l.* notes and ten 1*l.* notes for it, of the Durham Bank. Mr. De Berenger came shortly after to my house to take his leave of me; I am a druggist, and agent to the Durham Bank. From the 17th to the 21st of March, I had known of his being at Sunderland; the waiter had come requesting bank paper. I made an apology to Mr. De Berenger for not sending him more bank paper in change, and he acknowledged having received the whole of the notes I had sent from the waiter; he went by the name of Major Burne.'

Then, on cross-examination, he says, 'I know that 40*l.* note by the copy I made of it in my waste-book'—he had not the waste-book here, but he says, 'I know it also *from my initials on the back* of the note, made a day or two afterwards, when it was fresh in my recollection. I did not keep it distinct from my

other notes, but I marked it between the 31st of March and the 4th of April; but' (what is more material) 'I generally do not put my initials on bank-notes, but I did on this; I had no other 40*l.* note at the time, and have had no other since;' so that that 40*l.* bank-note is proved likewise.

Mr. Patteshall says, 'I am a partner in the house of Bond & Co. I did not pay that cheque of Mr. Fearn's, it was paid by Mr. Evans, a clerk of ours.' That person of the name of Evans never came, and was called on his subpœna.

They then produced two napoleons, found in the pocket-book of De Berenger, and with that they closed the evidence on the part of the prosecution.

On the part of the defendant, they first read the letters of Le Marchant, which, as I have before observed, certainly reflect very much upon himself.

They then call Lord Melville, who says, 'I am acquainted with Sir Alexander Cochrane; I recollect Sir Alexander more than once applying to me, that Mr. De Berenger might be allowed to accompany him, and to remain with him on the North American Station, to which Sir Alexander Cochrane was appointed; it was shortly before Sir Alexander sailed upon the command; I think it was five or six months ago. Sir Alexander was desirous that he should accompany him, for the purpose of instructing either a corps to be raised in that part of the world, or the Royal Marines, in the rifle exercise; and afterwards, when Sir Alexander wished that an officer of engineers should accompany him, and when I suggested that it would be difficult to give him that assistance, from the small number of engineer officers that could be procured, Sir Alexander mentioned, that as an engineer officer, he would be quite satisfied with Mr. De Berenger. I think there was some rank necessary to accompany such an appointment. I said I could not agree to the appointment, as far as the naval service was concerned, but I advised him to apply to the Secretary of State, or to the Commander in Chief; stating, that if they agreed to it, I should have no objection to let him accompany Sir Alexander. Lord Cochrane was appointed to the *Tonnant*, about the time Sir Alexander Cochrane sailed. I have no personal knowledge of Mr. De Berenger.'

Colonel Torrens, who is secretary to the Commander in Chief, says, 'I remember an application being made on behalf of Captain De Berenger in the latter end of December, or the beginning of January, by Sir Alexander Cochrane, to urge the appointment of De Berenger to go to America, for the purpose of applying

his talents in the light infantry drill, that is, the rifle service; he says, there were great difficulties started to this application; and in consequence of those difficulties the appointment did not take place. It was under consideration, however, at the Commander in Chief's office. I do not know personally the character of Mr. De Berenger.'

Then Mr. Goulbourn, Under Secretary of State for the Colonial Department, says, 'There was an application made by Sir Alexander Cochrane on behalf of De Berenger,' but he gives no further account.

William Robert Wale King says, 'I am a tinplate worker. I was employed by Lord Cochrane in making signal lanthorns and lamps. I made him a new sort of lamp, for which he had a patent. He came frequently, nearly every day, to my manufactory; he was there the 21st of February. He came between ten and eleven in the morning, that was about the time he usually came. I perfectly recollect the circumstance of a note being brought to him by his servant. I was present when the note was delivered. He immediately opened it, and retired into the passage; and he came into the workshop again, and shortly after went away. His lordship had been about a quarter of an hour there, that is a mile and a half from Grosvenor Square; his lordship only said, "Very well, Thomas," not making any observation of anxiety as to his brother.'

Mr. Bowering says, 'I am clerk in the Adjutant General's Office. Major Cochrane, the brother of Lord Cochrane, was returned as with the army in the South of France, "sick," on the 25th of January. The returns ran from the 24th of December to the 24th of January.'

Then Thomas Dewman says, 'I am a servant to Lord Cochrane, and have been seventeen years in the family. I carried a note to Lord Cochrane at Mr. King's manufactory; I remember the gentleman coming to Lord Cochrane's in a hackney coach; I do not know that I have seen him before or since. He first asked, where Lord Cochrane was gone to? and I told him he was gone to Cumberland Street to breakfast, because his lordship told me he was going there to his uncle's; I went there after him, and not finding him, I returned to the gentleman; his lordship had told me to follow him with some globe glass to Mr. King's. I had been there on Saturday; I supposed he might be there; I told the gentleman that I most likely should find him there; I should, however, have gone, if the gentleman had not sent me; he took the note from me, and

said, "I will add two or three more lines." I took the note to his lordship at Mr. King's; his lordship read the note in my presence; I left him at Mr. King's; his lordship had no man in Green Street but me; the other servant was in the country; he had been there two or three months before that; his lordship had given Davis warning on his appointment to the *Tonnant*. Davis was not in his lordship's service at that time, but he happened to be in the kitchen when the gentleman came; Davis is gone.' This, it should seem, is only to account for not calling Davis. 'Davis is gone with Admiral Fleming to the West Indies. It was a little past ten when the gentleman arrived. I was engaged to Lord Cochrane since Christmas; I had been in the family of Lord Dundonald; I do not know Holloway or Lyte. When I gave the note to Lord Cochrane, he said, "Well, Thomas, I will return." I waited on Major Cochrane when he first went into the army; I saw Lord Cochrane leave the place, that is Mr. King's.'

Then it is admitted, that Lord Cochrane has a patent for the invention of a lamp, dated the 28th of February last.

Mr. Gabriel Tahourdin says, 'I have known Mr. De Berenger five or six years; I introduced him to Mr. Cochrane Johnstone, in May, 1813. Mr. Cochrane Johnstone was in possession of a place at Paddington, named Vittoria, which he was desirous of improving. I introduced De Berenger to Cochrane Johnstone by mere chance; De Berenger afterwards employed himself in preparing a plan, and had nearly completed it. Shortly before Mr. Cochrane Johnstone went to Scotland, in September, he made him one payment on account of it. Besides the plan, De Berenger prepared a prospectus; Mr. Johnstone had got a number of that prospectus printed, early in October, to take to Scotland with him. I conveyed a letter from De Berenger, and I spoke several times to Mr. Johnstone upon the subject of paying for those plans, but no price was fixed upon till February last; I made repeated applications to Mr. Johnstone, in a delicate way, to pay him, and on the 22nd of February.' That is a very remarkable time, immediately after the transaction on the 21st; if the gentleman knew anything of De Berenger's conduct, on the previous day, it may deserve consideration, whether that was the most likely time, in point of delicacy, to have made the application. 'Mr. Johnstone sent me a letter on the 22nd of February, 1814, enclosing a letter from Mr. De Berenger to Mr. Cochrane Johnstone.' Now these letters, if you wish them to be read, I will read,

Foreman of the Jury: We think there is no necessity, my lord.

Lord Ellenborough: They relate to other work he was doing for him; there was that plan, I should have thought from two to three hundred pounds very excessive compensation for it; but still there was some claim affording a ground for money transactions to pass between them. As to the dates, there is one circumstance of Mr. Tahourdin dating the letter of De Berenger to Cochrane Johnstone, enclosed in the letter of Cochrane Johnstone to himself, which appears not very usual in the course of business; the letters show other transactions between them. Whether they were pretended or not, or if existing, then artificially brought forward or not, may be a question; but the letters certainly are dated at a most critical time, namely, on the 22nd of February. Then he says, 'There is a reference in the letter, to an assignment of some property, which De Berenger had, which assignment was prepared at my office; I do not know whether Mr. Cochrane Johnstone answered De Berenger's letters.' He is shown a letter, and he says, 'That is my answer to the letter of Mr. Cochrane Johnstone; I wrote it on the 23rd of February.'

There was a business to settle with Lady Mary Crawfurd Lindsay. There is a great deal of business certainly introduced into these letters, so much almost as to induce one to think there is an artificial introduction of business, to give the appearance of reality to the letters; however, Mr. Tahourdin certainly swears that there were such transactions at that period. But one cannot help recollecting that Mr. Tahourdin, towards the close of the case, appears to have been in communication with the two last witnesses, Donithorne and Tragear, on whose evidence I shall have to observe. He says, 'I saw a very few days after their date, a receipt for 50*l.* dated 20th September 1813, received of C. Johnstone by hands of G. Tahourdin, on account of large plans;' there is a receipt for 200*l.* dated the 26th of February: 'Received 200*l.* on account of plans and prospectus delivered, C. R. De Berenger;' and a note of hand for 200*l.* more, De Berenger to C. Johnstone, dated the 26th of February; I saw it two or three days afterwards. So that, just after the extraordinary transaction which had such an effect upon the funds, a communication that had taken place between them, and these letters are produced, and which are conceived to be material, with reference to the question now before you. He says, 'There were subordinate plans for the details of that same

place.' Then he says, 'I had become security for the Rules for De Berenger, some months before I knew Mr. Cochrane Johnstone.' Then he is shown the letter, which has been described as the Dover letter; he says, 'This certainly is not the handwriting of De Berenger; I have received a thousand letters from him, and this is not his handwriting; I do not believe it is a disguised hand of Mr. De Berenger; I have always considered De Berenger as a man of strict honour and integrity; I have trusted him to the extent of about 4,000*l.* in money, besides my professional claims on him.' Some writing in a road-book found in De Berenger's desk is then shown to him; and how any person should have writing by him like that, purporting to be his own, and it should still not be his own handwriting, one cannot conceive. But he says, 'Some of it is more like his handwriting than others, but I do not believe,' he says, 'that all the writing is his; some of the letters' he says (on being shown the pencil-writing in the book found in De Berenger's desk) 'look like his writing; the smaller parts look like his handwriting.' He is asked, 'whether he does not believe the whole of it to be his handwriting?' and he says, 'I do not know what to say, this pencil is not like what he writes in general; it being in pencil puzzles me more than anything else.'

Then General Campbell is called, who says, 'I know Mr. Cochrane Johnstone; I met him the second week in October last, I think at the Perth meeting; he showed me a prospectus of a new public building to be erected in the Regent's Park, or in the neighbourhood of it, I think he called it Vittoria.' He is shown the prospectus, and he says, 'I believe this is a copy of the same that he communicated to me in his or my own apartment.'

Then on the part of Mr. De Berenger, Lord Yarmouth is called; he says, 'I am lieutenant-colonel commandant of the regiment of Sharpshooters. Captain De Berenger was acting-adjutant—a non-commissioned officer. I have known him since 1811; very early in that year. I cannot recollect the day. I have received letters from him, and have seen him occasionally write, and have seen him frequently on the subject of the contents of those letters, and am acquainted with his character of handwriting.' Then that letter sent to Admiral Foley is shown to him; he says, 'If I had heard none of the circumstances, I should not have believed it was his handwriting. He solicited to go out in the month of January last. Some time back he told me, that he had very nearly arranged to go out to drill the men on board the *Tonnant*.'

Upon his cross-examination, he says, 'The handwriting of this is much larger than Mr. De Berenger's; he generally writes a round and neater hand.' He is shown another letter; and he says, 'I received that letter on the day it bears date, or the day immediately after.' He is then shown the writing in the road-book; and he says, 'It is larger than De Berenger's usual writing; some part of it is not larger, it is less round; it is more angular. I am not sufficiently conversant with handwriting to swear either way to this.' Then he looks again at the letter sent from Dover to Admiral Foley; he says, 'The letter R looks very much like his handwriting in the R of Random, before De Berenger, Random being his second name.' Then being asked, what he should think of this gentleman coming to him in his bottle-green coat of uniform, he says, 'It would have been more military that he should come so, though I never exacted it of him. I should not have been angry at it, but should have thought it the regular dress for him to appear in. If he had appeared before me in an aide-de-camp's scarlet uniform, and with a star, I should have been indeed surprised to see him present himself before me in that dress.'

Sir John Beresford is then called; he says, 'I have seen Captain De Berenger twice before yesterday. I never saw him write; I know of his application to go to America, as a sharp-shooter. In the beginning of February I paid my ship off, and met Mr. Cochrane Johnstone in town, who told me, Sir Alexander Cochrane was very anxious he should go out in the *Tonnant*, to teach the marines the rifle exercise. I went to the Horse Guards, to ask whether anything could be done; I was told it would be useless to apply to the Duke of York, and told Mr. Cochrane Johnstone of it; this was before Sir Alexander Cochrane sailed in January or December. I met him at dinner at Mr. Cochrane Johnstone's. I was there to meet Sir Alexander Cochrane, but he did not come.'

Mr. James Stokes says, 'I am a clerk of Mr. Tahourdin; I have been so between three and four years, and during that time have frequently seen the handwriting of De Berenger; he has been a client of my master's, and has been assisted very much by him. I have seen a great deal of his writing; this is certainly not his writing, not a word of it; and the letter 'R' (which Lord Yarmouth had spoken to) is not at all like it.'

Then they call witnesses, who at last come to swear, that Captain De Berenger slept in his own apartments on the Sunday night, the 20th of February; of course, if he did so, he could

not have been on the 21st at Dover, at the time sworn to by the witnesses.

William Smith is called; he says, 'I was servant to Mr. De Berenger, I was so about three years and a half; I have seen him write frequently.' Then he is shown the Dover letter, and he says 'I do not believe that is his handwriting; the signature there, Du Bourgh, I really believe is not his handwriting, no part of the letter; I am positively sure it is not. He has lately lodged with a person of the name of Davidson, in Asylum Buildings. I was with him on Sunday the 27th of February, when he went away; I perfectly remember he was at home on Sunday the 20th; he slept at home on the Saturday night the 19th, and went out about nine o'clock on Sunday morning; he came in afterwards at nearly eleven o'clock, and went out again immediately afterwards; he stayed out only about twenty minutes, and returned again when people were gone to Church, and stayed at home till about four o'clock, he then went out again. I was not at home then, I was over the way with my master's dog, leaning with my back against the rail, when he came down on the opposite side of the road facing the door. I went out with my wife soon after, and returned in the evening about eleven or a few minutes afterwards; he was not at home then, he came home afterwards, in five minutes after I got home, that was a few minutes after eleven; he slept at home that night. I and my wife were down in the kitchen taking our suppers, and my master was in the drawing room; before we got to bed, I heard him pass my room door to go to his bedroom, that might be about half-past eleven. He did not breakfast at home the next morning; I did not see him the next morning; I saw him about three o'clock in the afternoon of Monday; my wife made his bed.'

Then he says, on cross-examination, 'I let him in at a little after eleven at night. He rapped at the door in his usual way; his usual rap was not over loud, between loud and gentle; he went to his bed room that night; I did not see him in bed the next morning, I heard him go into the bed room.' Then he is shown a letter, which he says, 'I wrote to Lord Yarmouth' (but that is not given in evidence), 'I have my master's military grey great coat here at Guildhall; I never acknowledged that my master slept from home that night, to Mr. Murray; I never told either Mr. or Mrs. Davidson, that coming home and not finding my master at home, I had left the key for him at the usual place in the area, that he might let himself in; I never told them so,

either on Monday the 21st or any other day, to the best of my knowledge. He has no attendance in the morning, he does everything for himself, he does not usually ring his bell of a morning before he comes down to breakfast; he is a very quiet man. I never knew him otherwise, he never makes a disturbance, he walks about very much. My master finally left his lodgings on Sunday the 27th, I remember changing a 50*l.* note with Seeks,' (that is the 50*l.* I have mentioned to you) 'received it from Mr. De Berenger, I received it on the 27th, the day he went away; I took his things to the Angel Inn behind St. Clement's; a day or two before he left to go into the country he gave me 20*l.* I never saw him give Sophia 13*l.*, if I was in the room I did not notice it. I do not remember, after my master finally went away, Mr. Cochrane Johnstone calling with a letter; I never told Mrs. Davidson, that a gentleman who called there was Mr. Cochrane Johnstone. I was not at home; she told me a gentleman had called there, and described him; I said, most likely it was Mr. Cochrane Johnstone.' Upon his examination I thought he had said, that he had seen him only once, but then he said, at last, that it was only once at his house. 'I did not tell her on the Sunday, that if my master had been at home on the Saturday, when Mr. Cochrane Johnstone brought that letter, he would have gone off on the Saturday night; I did not tell her so either on the Saturday or the Sunday. My master was at home every day from the 20th to the 27th, going out as usual. On the 21st, he went out to dine; he did not tell me where he was going to, or when he came back where he had been to, that I recollect; he did not tell me he had been to Mr. Cochrane Johnstone's, when he came home, nor before he went out, that he was going there. When I came home on the Monday, I saw a strange black coat; I cannot tell whether the coat fitted my master; I never saw it on; I brushed it; I am used to brushing coats; I did not know whose coat it was; I cannot tell whether it was the coat of a man six feet high. I swore an affidavit; I drew that affidavit myself; I told Mr. Tahourdin of his absence on the 7th or 8th of March; I drew out the affidavit before that time, and did it without any sort of concert with anybody whatever, merely for the vindication of my master's character. I sent the affidavit to be published; I found my master a very injured gentleman; I took it to Mr. Cochrane Johnstone, and he published it.' And then he says, 'I let him in,' that is De Berenger his master, 'on Sunday the 20th.'

Ann Smith, the wife of William Smith, says, 'I was a

servant with my husband to Mr. De Berenger, in February last, and had been so two years and a half. I saw my master at home on the 20th of February; he went out about nine o'clock in the morning, and came in again between ten and eleven; he did not stay at home long then, before he went out again. My husband and I went out between four and five, after my master was gone out; he went out about four o'clock. My husband and I returned home about eleven, a few minutes before my master; my husband got in a little before me. My master came in that evening; he was let in by my husband, and I heard him above stairs; he had a bit of bread and a glass of ale that night for supper. I did not see him that night; it was my business to make his bed. I got up on the Monday morning about seven, that was the Sunday and Monday before he finally went off, I am sure; I usually get up about seven. My master went out that morning before breakfast; my husband went out about eight, and my master went out a little before him; I did not see him go out nor hear him; I did not know he was out till I let him in; I made his bed on the Sunday morning; I was upstairs making his bed, and he went out, I looked out of the window and saw him go; I made his bed on Monday, but that was not till after he came home, which was about twelve o'clock: when I found he had been out, I went upstairs immediately to make his bed.' You will consider whether there is any room for believing she might be correct, and that he might have lain down upon his bed before she made it. 'The bed appeared as usual, as if it had been slept in on Sunday night; I and my husband slept in our bed, and I made his bed on Monday as well as on Sunday. I remember how my master was dressed on the Monday when he came home; he had a black coat on; he had a bundle in his hand; I saw a part of a coat where the bundle was open, a grey coat just where the knot was tied; my master continued to sleep regularly at home till he finally went away.'

Upon her cross-examination she says, 'my master had no other man-servant but my husband; he used to wait upon him, and do any thing he was requested to do. I used to carry up breakfast when he rang, if my husband was out; he did not ring for my husband to attend him in the morning to dress. I supposed my master had breakfasted out when he came in; I was rather surprised that he had not rung. On the Sunday, when he went out, he had on his black coat and waistcoat, and grey overalls; I did not remark that the coat was too long for him; I do not know how he was dressed when he went out on

the Monday; he came home in a black coat; I cannot tell whether it was the black coat in which he went out on Sunday. I never saw Lord Cochrane. I never observed the black coat at all in the bundle; I saw part of a grey coat, and the green uniform coat was in the bundle. There was nothing extraordinary in my master's going out in green, it was his drill dress; he was in the habit of going out in it, and returning in it; I never knew of his going out in a green drill dress, and returning with a black coat before. I made an affidavit; I saw nobody on the subject of that affidavit; I saw Mr. Tahourdin a few days after making the affidavit. Mr. De Berenger wore whiskers sometimes; I do not know whether he wore whiskers then or not, I did not see much of him. I had not seen the bed on Monday morning till after his return.'

Then the ostler at Chelsea, and his wife, are called to prove that he was at a late hour in town. John M'Guire says, 'I am the ostler at Smith's livery stables, at the Cross-keys Yard, Chelsea. I am acquainted with the person of Mr. De Berenger; I remember seeing him on the 20th of February; it was on a Sunday. I remember it perfectly well, because I knew he was within the rules of the King's Bench; and I determined to ask his servant, how he was out of the rules. He had lived at Chelsea before. It was a quarter past six in the evening that I saw him at Smith's stable-yard gate; he asked me if the coach to London was gone; I told him the six o'clock coach was gone, but the seven would be ready in three quarters of an hour; he said it would not do to wait for the seven o'clock coach, and he turned round and took his way to London. When I went home that night, I mentioned to my wife, that I had seen Mr. De Berenger at a quarter past six. I was induced to mention it, from knowing he was in the Rules of the Bench, and not having seen him that way for some time before; he went from the lodgings he had at Chelsea, to the King's Bench.'

Upon cross-examination, he says, 'I have known him three years and a half, I knew him to be an officer in a corps of riflemen; that day fortnight I saw his servant, on the 6th of March, and he said, he was not clear of the Bench then. Last Monday week I was examined by the attorney. He had on when I saw him, a black coat, a black waistcoat, and grey over alls or pantaloons. I have seen William Smith this morning. De Berenger wore whiskers when I knew him before, but when I saw him on this Sunday he was close shaved, he had none then; it was three miles and a half from the Asylum.' Now it

appears, that De Berenger was three miles and a half from the Asylum at a quarter past six, where he had dined; if he had dined anywhere, we have not heard. He says, 'he thought it was wrong to be out of the Rules, and he was shocked at it.'

Then Mr. Hopper says, 'I am an architect. I saw Mr. Cochrane Johnstone's premises at Alsop's Buildings two nights ago.' He is shown the plan and prospectus, and he says, 'From the trouble that must attend it, a compensation of from 200*l.* to 300*l.* might not be excessive.' I have mis-stated it, therefore before; he does not say, it would not be excessive, but it *might* not be so.

Then Mrs. M'Guire says, 'I am the wife of M'Guire, the ostler. I did not know Mr. De Berenger, when he lived at Chelsea, I knew Smith his servant. My husband mentioned to me on the 20th of February, his having seen Mr. De Berenger, Smith's master; he mentioned it to me at ten at night; it was the Sunday before Shrove Tuesday, it was my child's birth-day, and therefore I remember it. My husband told me, he had seen him at about a quarter past six; he said, he wondered whether he had got his liberty yet or not; I cannot particularly say whether he said it was shocking or not; he said, he wondered whether he had got his liberty.'

How this should have excited the curiosity of this man, one cannot well conceive; but one cannot comment upon that which one cannot read and believe.

Then Henry Doyle Tragear is called; he says, 'I was at Mr. Donithorne's house in York Street, Westminster, in the month of February last. I was staying there; I went there upon the occasion of my leaving my house, No. 39 Little Queen Street, Holborn, where I had carried on the hatting business. I left my house finally on the 17th, and went to Donithorne's; I remain at his house still. I had seen Mr. De Berenger frequently previous to that, at Mr. Donithorne's house. I particularly remember having seen him there on Sunday the 20th of February; I saw him twice that day; I saw him between nine and ten in the morning, and again between eight and nine in the evening; I saw him at Donithorne's house both these times; he might stop about half an hour, more or less. I have seen him frequently talking with Mr. Donithorne about some drawings, designs for pieces of furniture, and things of that sort. Donithorne is a cabinet maker. Donithorne has shown me these things before. I am a hat manufacturer; I am not entirely out of business, but I have not a house at the present

moment; I went there to reside till I could get a house to suit myself, to start in business again.' According to the wife, it did not appear as if he was likely to go into business again. 'My wife, Mrs. Donithorne and Mr. Donithorne were there in the evening. When he came, Mr. Donithorne went into the garden with him; he said he would not come into the parlour to disturb the company; I had seen him repeatedly before.'

Then upon cross-examination, he says, 'I was not struck with any alteration in his appearance that night; he had no whiskers on that night; I do not know whether he had ever worn whiskers before; he had a black coat on that day; he had his hat on. It was between eight and nine when they took a walk in the garden. I cannot say whether his hair was powdered; they went out to take a survey of the premises in the morning. I have seen Mr. Donithorne and Mr. Tahourdin together one day last week. I will swear, that I did not know they were acquainted together before that time; I never was sent for to become a witness upon this occasion; I went myself; Tahourdin did not send for me; I went to Tahourdin I think one day last week. I did not know that I was to be a witness till last week, or that it was material I should recollect the 20th of February. I let my house on the 17th of February to Samuel Nicholson; and on the Sunday morning following Mr. Donithorne came to my room, and told me a gentleman was come to look over the house, and if I would get up he should be obliged to me. I have seen Smith, the servant.' He then says, 'I have been bail twice, once for fifteen pounds, that I believe is settled; I have been bail again, but I do not quite know whether that has been settled, nor the amount. I don't recollect if I have been bail oftener.'

Then Mrs. Tragear, the wife of the last witness, is called; she says, 'I know the defendant De Berenger; I have seen him often. I and my husband went to stay at Donithorne's when we gave up our house; the day we gave up our house was the 17th of February. Mr. De Berenger called at Donithorne's on Sunday the 20th, between nine and ten in the morning; we were not up then. Mr. Donithorne was in the cabinet business. He came up and said, he was anxious we should get up, as a gentleman was come to look over the house. When I got up, I threw down the sash, and saw Mr. De Berenger; he was measuring the ground in the garden. I am sure it was he; I saw him again in the evening between eight and nine; we were in the parlour along with Mr. and Mrs. Donithorne; asked him

to come in; and he said he would not disturb the company; he wanted to speak with Mr. Donithorne; they walked backwards into the garden, and I saw him no more.'

Then, on cross-examination, she says, 'my husband is deaf at times; Mrs. Donithorne came to call us; Mr. De Berenger went into the attics; he did not go into our room.' It is afterwards said by Donithorne, that he went two or three times into it. 'I do not remember seeing any one in the garden with De Berenger and Donithorne; one of them held the measuring-rod, and the other took the figures down. There was no snow; I think it was a wet morning, and the rain had cleared the snow away. My husband failed on the 17th of February; he then came to Mr. Donithorne's, who is a cousin.'

Then Donithorne is called; he says, 'I live in York Street, Westminster. Mr. and Mrs. Tragear came to live at my house, on Thursday the 17th of February. I had known De Berenger a long while; I am very well acquainted with his person; I am a cabinet-maker; De Berenger had furnished me with designs for furniture. I remember seeing him on the Sunday morning, after Tragear came to my house, which would be the 20th of February, between nine and ten in the morning; he came to look over my ground, as I was going to make some alterations in my little garden, and also some designs for cabinet work. I furnished Mr. Cochrane Johnstone's house in Cumberland Street, for Miss Johnstone. I saw him again between eight and nine in the evening; I let him in, and asked him to walk into the parlour where we were sitting; he said he would walk into the back-parlour; he stayed about a quarter of an hour or twenty minutes; he did not go into the garden. In the morning we were, I dare say, an hour together in the garden; he called in the evening to give me an answer, when he was to draw a plan for me.' (This does not appear to be business of sufficient consequence to have led this man twice there in the course of that day.) 'I was going to convert the front part of my house into an inn, and the back part into pleasure-ground; it was a misty rainy morning, and very cold.'

On his cross-examination, he says, 'he came as the friend of Mr. Cochrane Johnstone, to give me plans for furniture; I proposed to him surveying my house, with a view to the improvements I intended to make. I went and called Mr. and Mrs. Tragear, and desired them to get up; I have no doubt of it, I went twice.' He is then asked as to some writs against persons in the Stock Exchange; he says, 'I employed the attorney,

Mr. Tahourdin, by desire of Mr. Cochrane Johnstone, to issue 185 writs; Mr. Cochrane Johnstone is to pay for them;' it appears that these writs are against persons for stock-jobbing transactions. 'Tragear never failed, to my knowledge.'

Gentlemen—This is the whole of the evidence on each side. I have made my observations upon it, as it has proceeded. You have heard from me already, that this is a case in which both the individuals and the public are deeply concerned. It is important that public justice should be vindicated by the conviction of the defendants, if they are guilty; and that justice should likewise be done to the defendants, by exempting them from punishment, if they have committed no crime. You will consider upon the whole of the evidence, whether these several parties were connected in one common plan, and were using their several endeavours and means to raise the Funds for corrupt advantage, by false contrivances, and the circulation of false intelligence—if you believe that all of them were concerned in it, you will find them all guilty—if you believe that any of them are exempt from a share in this Conspiracy, you will acquit them.—You will now consider of your verdict.

Mr. Richardson: Your Lordship stated that there were some Counts upon which they ought not to be found guilty.

Lord Ellenborough: Yes, gentlemen, you will find the defendants not guilty upon the first and second Counts of the Indictment, as those allege facts and motives, in which they cannot all be supposed to be joined.

A Juryman: They are guilty or not guilty of a Conspiracy.

Lord Ellenborough: Yes, a Conspiracy, which is a crime that cannot be committed by one; it must be committed by more than one.

The Jury retired at ten minutes after six o'clock, and returned at twenty minutes before nine with their Verdict, finding all the Defendants—GUILTY.

APPENDIX C.

Extract from 'Times,' *June* 9 *and* 10, 1814.

Law Report.—Guildhall, Wednesday, June 8.

(*Special Jury.*)

THE KING *v.* LORD COCHRANE AND OTHERS FOR A CONSPIRACY.

THE cause was called on at nine o'clock, and the jury were sworn, consisting of the following merchants:—

George Brown,	John Gray,
Henry Septimus Woolaston,	Jeremiah Evans,
John Parker,	John Green,
James Lee,	James Hodgson,
George Miles,	John Etherington,
Lewis Lloyd,	Richard Hall.

Mr. Ralph De Berenger appeared in Court. On the Bench were Lord Melville and Lord Lauderdale.

The junior Counsel opened the proceedings by reading the allegations in the indictment. It consisted of eight counts, seven of which charged the defendants with having propagated false rumours with a fraudulent intention, and with a view to cheat the subjects of our Lord the King; and De Berenger was particularly named as having written the false letter to Admiral Foley. The eighth count charged them with using false arts, &c., to deceive and mislead his Majesty's subjects.

Mr. Gurney then rose. He began by requesting the Jury to dismiss from their minds whatever they might have heard or read relative to the transactions now to be investigated. It was one of the inconveniences of a free Press that sometimes partial circumstances were published before the trial which might operate against the accused; it also happened that those who were to be tried sometimes contrived to circulate what might be good for their defence. Whatever had appeared either on one side or the other, he begged the Jury to banish from their recol-

lection, and to come to the discussion calm, unprejudiced, unprepossessed, and judge solely by the evidence which should be laid before them. With this preface he would proceed to his case. It would be a very extraordinary matter if that which, if done by one person would be a gross fraud, should cease to be a crime if done by three or more persons. To conspire to spread false news to raise the price of any commodity was a crime; to conspire to raise the Funds, considering the immense extent to which they affected the community, was a still greater crime. The public at large, through the Commissioners for the Redemption of the National Debt, must be affected, and likewise those parties in the Court of Chancery whose money was in the hands of the Accomptant-General, some of whom, it would be proved, had been seriously injured. The Funds might be raised by accidental circumstances and rumours, but this made it the greater offence to raise them by false communications; and if the conspiracy was framed in order to sell out to the injury of others, then there could be but one appellation for such conduct, aggravated, too, as it had been, by an attempt to poison the sources of official intelligence. Such an offence he undertook to prove against the persons named in the indictment. When he said this, the Jury must not expect direct evidence; in the nature of things that was impossible, unless the accomplices in the act should themselves discover it. But those who imagined that positive evidence was necessary for conviction (a common mistake) should learn that guilt may be as strongly proved by circumstances. If direct proof were necessary, what security could there be against murder by poison? No one sees the villain mix his deadly draught. What protection would there be against the midnight burglar, who works in darkness—against the incendiary, who works in the closest secrecy, but who, from circumstances over which they have no control, are traced and convicted? It was by such evidence that he should bring the present charge home to the defendants; he would show that they were all concerned in the conspiracy, and had acted with a precision as if their parts had been regularly assigned to them. It was difficult at this moment of triumph to carry our minds back to that season when the continental empire seemed too small for the ambition of one man; when, though the Allies had invaded the French frontier, yet their attacks had been repulsed, and one of their armies saved almost by miracle; when every mind was waiting in trembling anxiety for the destruction of that pernicious being who governed France. At that moment,

when the Funds were so liable to be affected if the pretended news were believed for one hour, it would be sufficient to answer the object of the projectors of the fraud.

The first person whom he should bring before them was Captain Random De Berenger. He was a fit man for the purpose for which he was chosen; he was a foreigner by birth, but had resided a considerable time in this country; he might well pass for an officer; he was in the Rules of the King's Bench, and so involved in debt that he would rather reside in any country than this. On the Sunday night, or early on the Monday morning, he made his appearance at Dover, at the 'Ship' tavern. He had on a scarlet uniform, with a cross on his coat; over it a dark fur coat, and in his hand a small portmanteau. He described himself as an aide-de-camp just arrived from France, where, he said, a decisive battle had been fought near Paris; that Buonaparte had been pursued and killed by the Cossacks, and that peace might soon be expected. He called for a sheet of paper, that he might write to the Port Admiral. It was brought, and he wrote a letter, which was immediately despatched. People flocked about him, anxious to hear the news; but he expressed himself extremely fatigued, and told them they would know all next day. He ordered a post-chaise, and pulled out some Napoleons to pay the landlord, who, being ignorant of their exact value, refused to take them, when the stranger immediately paid him with bank-notes. He then proceeded towards town, and at Canterbury and Sittingbourne gave each post-boy a Napoleon. It was difficult to say which arrived first in town—Colonel De Bourgh, or expresses which had been sent by the people of Dover—for it appeared that many of them were so elated with the news that they immediately ordered horses for London. The letter which had been sent to Admiral Foley he was able to produce to the Jury. It was signed Lieut.-Col. Edward De Bourgh, aide-de-camp to Lord Cathcart. It stated that the writer had just arrived with despatches from the army; that he had pledged his honour to the crew of the vessel which brought him over that they should not be molested, and he hoped the Admiral would give an order for that purpose. He congratulated the Admiral on the good news that the Allies had just gained a decisive victory, that Buonaparte had been killed, and that peace might be expected immediately. The post-boy who carried this letter reached Admiral Foley at six o'clock on the Monday morning, and nothing but the haziness of the weather prevented the telegraphs from being worked. Meantime

Colonel De Bourgh was spreading his news on the road, and in the hearing of the post-boys at Dartford he gave directions that they should drive as fast as possible; but before their arrival at Shooter's Hill he told them to slacken their pace, as it would not be necessary for him to be so particularly early, now that the telegraphs were working. The boys, however, told him that they could not work on account of the weather. At Shooter's Hill he got out of the chaise and walked and talked familiarly with the boys, giving them wine which he had in the chaise, and telling them that all was now over, that the Cossacks had killed Buonaparte, and fought for his body. He asked where he could first get a hackney coach, as that would go faster than they could. They told him at the 'Bricklayer's Arms,' but he preferred the Marsh Gate, Lambeth. The boys, who were very observant about the gentleman who brought such good news, looked back at him from time to time, and observed that as he crossed St. George's Fields he pulled up the blinds. He got into the hackney coach at the Marsh Gate and dismissed the chaise, giving the boys each a Napoleon. This was near ten o'clock. The news soon after reached the Stock Exchange. At the opening of the business of the day omnium began at 27½, as it had closed on the Saturday. In about a quarter of an hour the news came, and omnium soon rose to 30. At 12 o'clock, however, as no messenger had arrived in the City, it was going down, when at one a full confirmation arrived. The auxiliaries to the main plot arrived in the shape of two French officers in a chaise covered with laurels, and who threw out of the windows little billets with the news as they passed through the City. They then drove over Blackfriars Bridge, and left the chaise at the Marsh Gate, put off their cocked hats, put on their round ones, and walked away. This fresh intelligence produced, as might be expected, enthusiasm on the Exchange—nothing is so contagious as good news. The Funds rose rapidly to 31, 32, 32½, when, after an hour, persons who had been sent to the West-end of the town having announced that Government had received no such intelligence, they fell again to their original state.

A Committee was appointed in consequence of this fraud, and pursued the investigation with much industry. They soon discovered an underplot, which, as it was short, he would dispose of first. They found that the second chaise had come from Northfleet, and that the persons who personated the two French officers were Mr. M'Crae and Mr. Wright, a poor Navy agent. They learned that M'Crae lodged in Fetter Lane, and had, the

day before the fraud, carried to his lodging two great coats, lined with white, and had employed his landlady to make some white cockades. Being asked what they were for, he said, to take in flats. On the Sunday afternoon he went down to Gravesend, and on Monday returned. The great coat was altered, and he burnt the cockade. The same week he boasted of the money he had (though the week before he had been quite distressed); and being interrogated as to his getting it, said if he had not got it, somebody else would. Before this he had applied to a Mr. Byng, and had offered him 100*l.* if he would personate a French officer, bringing news to town: this Mr. Byng indignantly refused. M'Crae, however, picked up from Mr. Byng, who was well acquainted with French, several phrases which were the identical phrases used in the billets thrown out of the window of the chaise. On further inquiry they found him engaged with Mr. Holloway, a wine-merchant, who had a tolerable milk-score in the Funds, about 40,000*l.* He could not connect this second chaise with the first, but its appearance would have excited derision unless supported by the former, and left no doubt that the two transactions were parts of one whole. The next discovery made by the Committee was of the hackney coachman who drove Colonel De Bourgh from Marsh Gate directly to No. 18, Green Street, the house of Lord Cochrane. In this house his lordship had resided but three days, and the Colonel must have known him pretty intimately to be so soon acquainted with his abode. He alighted there, and was told to go to Cumberland Street. The Committee were thus led to inquire whether Lord Cochrane was one who could have been interested in the event of the late transactions; and they discovered with surprise that this officer, distinguished for rank and bravery, who had just been appointed to a high command, and whose soul might be supposed to be entirely absorbed by it—this Member for a great city, who ought to keep himself entirely pure from any possibility of wishing to exercise any undue influence over the Funds of the country, was in fact a deep speculator in those Funds; that on the Monday morning he held a very large balance, and had sold it all to advantage. They then felt it impossible to doubt a connection between Lord Cochrane and the Colonel De Bourgh. They inquired further, and found that Mr. Cochrane Johnstone and Mr. Butt, formerly a clerk in the Navy-office, were engaged in the Funds to an astonishing extent; that the purchases and sales of all three were the same; that they seemed to act with one heart and soul; that where one bought

20,000*l.* the others did the same; if one bought 95,000*l.* the others followed the example; and that the amount of their three purchases was very near a million; and that on Monday every shilling of it was sold. Their principal agent was found to be Mr. Fearn, though there were several others, particularly Mr. Richardson. From his evidence it appeared that Mr. Butt was so anxious, that he wished Mr. Richardson to purchase for him 150,000*l.* This tremendous balance, this world of stock, he disgorged on the Monday. The profits to the party were altogether 10,000*l.*, but they would have been 100,000*l.* had the telegraphs worked as they intended. The Committee published an account of their proceedings, for the use of the Stock Exchange: they had at that time a clue that De Bourgh and De Berenger were the same; but not having ascertained the matter, they prudently said nothing on the subject. The newspapers gave some account of the publication, and enough transpired to direct the eyes of all individuals to Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt. They were thus called upon to offer some vindication of themselves. Mr. Butt threatened prosecution, but had failed to execute his threat. Mr. Cochrane Johnstone likewise threatened, and likewise failed. Mr. Cochrane Johnstone was particularly indignant at an assertion that whereas his business had before that time been transacted at another office, he had, on that morning, taken an office for Mr. Fearn in a court close to the side door of the Stock Exchange. He swore positively that he had not taken the office. He (Mr. Gurney) was sorry to say that though, after what he had seen of the evidence, he was not much surprised at his denial of a fact, yet he was surprised that he should deny what could be proved by a witness and by his own letter. Previously to the fraud he had called on Mr. Harris respecting the hire of a house, and afterwards wrote to him to know if he would sell the house. He said that as there was at present several persons in the house, it was rather awkward and too public. (Walls have ears, said Mr. Gurney.) He directed him to send an answer to Cumberland Street. So much for his denial. Lord Cochrane was called upon to account for his visitor, and how did he do it? He should have thought that a nobleman in his situation would have pledged his word and honour: no, he chose to make an affidavit. Now a voluntary affidavit was a thing on which no indictment for perjury could be supported; it was a thing almost always mischievous, and done for the purpose of fraud; and he was sorry that respectable magistrates would lend their names

to such instruments. Such an affidavit, he could prove, was made by Lord Cochrane, and he would read it, for it was very important to the case. (Here he read the affidavit.) Lord Cochrane had complained that he had not been called upon by the Stock Exchange; would that he had; it would have been curious to see the power of the human countenance with which he could have uttered his strange assertions. What! a man engaged in a tremendous stock-account, and interested also in a new invention, suffers himself to be hurried home by a letter from a person whose signature he cannot read; and then goes and holds that extraordinary conversation with him. De Berenger wanted to change his dress. For what reason? Why could he not go to Lord Yarmouth in the same dress in which he visited Lord Cochrane? His going back to his lodgings in that dress would excite suspicion. Indeed! Was not his going from them in such a dress more likely to excite alarm than his return in it? De Berenger wished to change his dress because, in fact, he knew it was unsafe, and might lead to detection. Lord Cochrane then, by his own account, assisted him with means to abscond; he was sorry that his Lordship could see nothing wrong in this. Either his mind must have confounded all ideas of right and wrong, or he confessed the smaller delinquency to avoid detection on the greater. Lord Cochrane then asserted that the uniform of De Berenger was *green*: it would be proved to have been *scarlet*. Lord Cochrane thought it a favourable circumstance that he had sold his stock at a small profit. On the contrary, nothing could be stronger against him. If he and his coadjutors had believed the news, would they have sold at that small profit? Would they not have waited till omnium rose higher, when it was so reasonable to expect that it must rise? They had been bulls: they had purchased for time, venturing deeper and deeper, till they were out of their depth. They could not have sold without a monstrous loss unless some favourable circumstance occurred. Therefore, as fast as the news operated, the sale was directed to go on; orders were issued every moment, and in the hurry one sold 10,000*l.* less, the other 24,000*l.* more than was held. This statement, therefore, did not appear to be of much avail. It was felt, however, that little was done if the defence rested here. There was no man who would regard their assertions if it could be shown that De Berenger and De Bourgh were the same. They therefore set up an *alibi*, and published two more voluntary affidavits of the servants of De Berenger; these documents were usually in the third person,

but the present were in the first. (Here he read the two affidavits.) To be sure, if the true De Berenger slept at his house that night, he could not be at Dover, and the evidence was conclusive: he was not, he could not be the impostor. The fact was, that the party thought De Berenger was out of the kingdom; they were therefore bold and vapoured. Mr. Butt was very urgent for his money; the Stock Exchange, with perfect justice, said that they wished to deposit the money in the hands of trustees to await the investigation, and to be disposed of after that event. Mr. Butt, however, was clamorous: 'Wait a bit,' they said, 'wait for your own honour and character.' Mr. Butt, however, had different sentiments. His feeling was,—

> Populus me sibilat, at mihi plaudo
> Ipsi mihi, simul ac nummos contemplor in arcâ.

While, however, Mr. Butt was thus vapouring, a warrant had been issued against De Berenger; he was allowed the privilege to stay in the kingdom, but not to go out of it without leave. He was apprehended at Leith, and then brought towards London; he was identified at Dartford and elsewhere by every person who had seen the original transaction; above all, he was identified by one very important person, whose name was Solomons. It would be remembered that a fisherman had picked up in the river a scarlet uniform (cut in pieces) with a star. Mr. Solomons, of Charing Cross, had seen this, and identified it; he had sold it on the Saturday preceding the fraud to a gentleman who was very liberal in his payments, and said it was intended for a gentleman who was to personate an officer. Mr. Solomons told him that he need not buy it, he had better hire it. De Berenger was too wise for that. Mr. Solomons, when he saw him, at once knew him to be the person to whom he had sold the uniform, as before described. What became now of these voluntary affidavits of *alibi*? If men thus resorted to lies for their defence, what was the inference? Because they felt that truth would lead to conviction, and wished to ward it off. If he should rest his case here, what could be said? What! if persons deeply interested in certain concerns, and whose ruin might have followed from certain contingencies, what if such persons should endeavour to strengthen themselves by falsehood? They had done so; for would they venture to put the Smiths, the authors of these affidavits, into the box; if they do not, 'they die and make no sign.' If they do, he would undertake to prove, from their own mouth, that they were mere victims of a fraud. Perhaps his

learned friends would say, 'How can De Berenger be connected with Lord Cochrane?' Would De Berenger be such a fool as to go directly to his house if he had been associated with him? This defence went on a wrong assumption; that those who act wickedly act rationally, and provide for all events. The infatuation of bad men was the organ which Providence used for their destruction; and by the winding of their course, you will trace the steps of the wicked. It was a proverb as old as man, that 'quem vult perdere Jupiter, prius dementat.' It was equally true of stock-jobbing conspirators, and of the rulers of empires. The fact was, that in the hurry of the conspiracy, they forgot to settle where De Berenger should go on his arrival, and he was afraid to go to his own house. He therefore went to Lord Cochrane's, where he received a dress. He was familiar with Lord Cochrane, and boasted of it. This could be proved by more than one witness; but the matter did not end here. What would persons do, who employed a man for such purposes as De Berenger? They would pay him and let him go. They did so; he is paid and quits his lodgings, being well paid in notes; for which notes he has shown an extraordinary attachment. No wonder, for they afford the most damning proof against him. Mr. Tahourdin and Mr. C. Johnstone were sureties for Mr. De Berenger for 4,000*l.* Mr. De Berenger had cheated them, and yet Mr. Tahourdin forgave it all, and now defended him. Among the memoranda of De Berenger were found certain important facts. It appeared that De Berenger was to have a percentage, which amounted to 450*l.*; he could trace different notes to the amount of nearly 400*l.* to De Berenger; a great number of those marked with his name were found upon his person; and one note of 50*l.* which was paid to Lord Cochrane at the same time that the other notes had been given to Butt could be proved to have been given by Lord Cochrane to his coal merchant. The sums together made up 450*l.*, and could any one doubt under such circumstances that they were the rewards of his criminal service? This striking circumstance transpired in the newspapers, and Butt immediately writes to the 'Morning Chronicle' that the astonishment of the public would cease when they knew how these notes got into the hands of De Berenger. This Mr. Butt was now called upon to prove by evidence. He had nearly forgot to state that, as a last resource, Mr. C. Johnstone had written to the Committee of the Stock Exchange, stating that M'Crae was ready to confess for a reward of 10,000*l.*; that he, and Lord Cochrane and Mr. Butt, were willing to advance

To this strange proposition no answer was returned. Mr. C. Johnstone complained of this, and then wrote another letter. He must make one observation on this second letter. Mr. C. Johnstone called this matter a *hoax;* that is, a gentleman of high birth, accused of a fraud, instead of the usual sensibility of honour, calls the matter a joke. He should like to know what term was given to fraud in the vocabulary of the hon. gentleman; with him, perhaps, it would be found that taking money under false pretences was a mere play of the imagination, and cheating with loaded dice an ingenious exertion of art. Mr. C. Johnstone must have thought that the Committee had been chosen for their gullibility when he supposed they would yield to such a proposition. Suppose the French Admiral in Basque roads had offered to send Lord Cochrane a pilot to ruin the French cause on such terms, would his Lordship have accepted it, or would he have thought the French Admiral mad? Who could contemplate this transaction and not see that it was the last desperate push of men who found themselves on the eve of detection? The Stock Exchange had acted well in this business; they had investigated the matter with care, and industry, and skill; they had no wish but justice. That justice he hoped, indeed, he knew, they would receive at the hands of the jury. The verdict of this day would, he trusted, convey a salutary lesson; it would teach that none could be above the law, and none beneath it; and that no device, nor the most complicated scheme of art, could shield the wrong-doer from conviction and public shame.

John Marsh, who keeps the Packet-boat, near the Ship inn, Dover, heard a knocking on the 21st [of February, and, on going] out, found a gentleman in a grey coat, with a red uniform under it; he had a star of the same description as the one produced, he was very anxious for a chaise and four, and wanted an express horse to send to the Admiral of the Fleet. This all passed in the passage. The witness asked him whence he came; he answered he bore the most important dispatches, and had just arrived from France. The witness asked him where he landed; he said on the beach; he wanted to write: witness followed him into the Ship inn and saw him write; witness asked him whether he should call the Collector of the Port, whose custom it was to see people on landing; he answered it was not necessary; two candles were sent for by the witness's desire, and placed on the table where he was writing; the witness had

an opportunity of observing his person, and now pointed the defendant De Berenger out in court; persons of the names of Gorey and Edis were there too; witness saw the defendant again when he was in the chaise; he told the two postillions he would give them a napoleon each; he had a travelling cap on with gold or silver fringe; he did not say how he got on the beach. Upon his cross-examination by Mr. Park, he did not know what sort of a night it was; the boots let him in; the defendant was only twenty minutes altogether at the inn; he wished the witness to quit the room, which he did; the witness never saw the defendant before or since, but was positive as to his identity; upon his re-examination he said he discovered him himself in the hall to-day, and had no doubt about him.

Mr. Gorey, hatter at Dover, was at Mr. Marsh's, the landlord, on the morning in question, and upon arriving at the inn perceived a gentleman in a great coat, such as that produced in Court; upon his return he found him in a parlour with the candles; witness then perceived that he had a red uniform trimmed with gold lace and a star; he had a cap similar to that produced. It had gold lace; the gentleman was walking up and down the room; witness having heard Marsh say he was a messenger, asked him what the news was; he replied that being a messenger he was sworn to secrecy, but he brought glorious news, the best that was ever received in this country; he rang the bell for pen, ink, and paper, which were brought, and he proceeded to write; the witness took leave of him before he finished the letter; the candles were sufficiently near to enable witness to observe him; and he now identified the defendant De Berenger in Court; he had no doubt of him.

Upon his cross-examination by Mr. Richardson, he said that he went to order the horses, and was absent some time; he carried the candles to Mr. Marsh; the witness was up at the time, it was between one and two o'clock in the morning; the defendant stopped there after two o'clock; he was there about a quarter of an hour or twenty minutes; this witness had not seen the defendant since.

Upon his re-examination, he said he had three or four minutes to observe the defendant, which he did anxiously on account of the glorious news. Sometimes he had the cap on and sometimes off; he had no doubt as to the man.

Mr. Elliott Edis, of the Victualling Office, was at the Packet-boat on the morning of the 21st of February; his attention was called by the arrival of the messenger, whom he first saw at the

Ship; he was then walking up and down the room; he had a grey great coat with regimentals, red and gold; he did not notice any other ornament; he had a cap with a gold band; it was slouched, and appeared to be made of rough beaver, black or brown; it had no rim; he had no conversation with defendant; he saw him sit down to write; he did not say to whom; the witness could not hear what he said; he is deaf; his cap was on the whole time witness was there; he identified the defendant.

Upon his cross-examination by Mr. Park, he said he saw defendant five or six minutes or more; he followed Gorey immediately; although the cap had no rim, the round part of it was pressed down over his forehead.

Upon his re-examination, he said the cap was similar to that produced.

Mr. Wm. St. John was also at the 'Ship' at the time, as a traveller; he had retired to rest, but was awakened by a knocking at his door, and a person calling out for a post-chaise; he dressed himself and came downstairs to the coffee-room, where he saw a gentleman in a military uniform; his coat was scarlet, with a red silk sash, grey pantaloons, a grey military great coat, a seal-skin cap of fawn colour. There was something like a star on his uniform; he was walking up and down the room; witness asked him if he knew of the arrival of Mr. Johnson, the messenger, who was expected; he said he knew nothing at all about it, and begged to be left to himself as he was extremely ill; upon witness leaving the room, he desired he would send him in paper, pen, and ink; witness returned in a short time and found him writing; he left the room immediately. He saw him again at the lower end of the street, stepping into the carriage; he asked him what the news was? the stranger replied, as good as witness could wish; this was the third time witness ever saw him; the second was by accident at Westminster Hall, in the Court of King's Bench, with a great many persons about him.

Upon his cross-examination by Mr. Richardson, he said he went to Newgate for the express purpose of looking at him, and followed him to Westminster for that purpose, at the desire of Mr. Oakes of the Stock Exchange. He heard him plead to the indictment. Witness is accountant to the Irish Charitable Society; and never acted as a stockbroker. He saw him about a minute each time; he had his cap on; it was not slouched; it had no leaf; he was in Dover for the purpose of getting information for a newspaper. If he had picked up such important

news as this, he should not have communicated it to the Stock Exchange; he went to Dover at the desire of a proprietor of the 'Traveller'; he went on the day before to communicate with Mr. Quin. Another object of his going was to make as much as he could of a little omnium he had. The witness knew Hyams, the post-boy, whom he saw sent with an express to the Port Admiral, which Mr. Wright, the landlord of the Ship, gave him from the defendant.

Hyams was called up on the night in question, and sent off with the express for Admiral Foley, to whose servant he delivered it at Deal. He afterwards saw the Admiral.

Admiral Foley received tne letter set out in the indictment, at three o'clock in the morning, which induced him to get up; he enclosed it in a letter to Mr. Croker, Secretary to the Admiralty, and sent it by the boy. He did not work the telegraph, because the weather was too thick.

Mr. Henry Wright being extremely ill was unable to attend; Mr. Park and Mr. Serjeant Best contended that the letter was not identified as that written by the defendant, and by him delivered to Mr. Wright.

Mr. Lavie, attorney for the prosecution, then proved the letter to be of the defendant's handwriting; his usual hand is smaller. Upon his cross-examination by Mr. Park, he believed two other papers marked A. and B. to be of the defendant's handwriting.

The letter was then read.

—— Dennis, post-boy of the Ship, drove a chaise and four from thence, on the morning in question, to the Fountain, in Canterbury; there was a man in it, who gave him and his fellow-driver a napoleon apiece, which they sold for a 1*l.* note. Edward Broad and Thomas Dale drove him from Canterbury.

Edward Broad remembered the circumstance; they drove to the Rose, Sittingbourne; the gentleman did not get out there; the chaise went on with four horses. Michael Finnes and James Wakefield drove on. The witness received a napoleon for driving.

Michael Finnes remembered the circumstance; it was then between four and five o'clock in the morning; he drove the gentleman to Mr. Wright's house, the Crown, at Rochester. The gentleman got out, and gave him two napoleons, one for his fellow-driver. He had a pepper-and-salt coat on, and a red coat under that; he had a cap on.

William Wright, landlord of the Crown, had a particular reason for remembering the day. The gentleman had a pepper-and-salt military great coat of the colour of that produced in Court. He had a scarlet coat with gold lace under that, a cap on his head, nearly the colour of the great coat. On the coat was a star, and something suspended either from his neck or his button-hole, which the person himself told him was an honour. It was like one produced in Court. When the chaise drove into the yard, he found the gentleman looking out of the front window of the chaise; he asked if he could have anything to eat, for he had had nothing since he left Calais. Witness offered him anything he pleased, and said he supposed he brought good news; the gentleman replied he did; the business was all done, the thing was settled. Witness asked the nature of the business; the gentleman replied, he's dead. Witness, 'Whom do you mean, sir?' Answer, 'Napoleon.' Witness replied, 'Is it really true, sir?' The gentleman answered, 'If you doubt my word, you'd better not ask any more questions.' The witness apologised, and asked the nature of his dispatches. He said there had been a very general battle, between the French and the whole of the Allied armies, in which the French were defeated, and Buonaparte had left the city; but being overtaken at the village of Rouchon, six leagues from Paris, he was seized by the Cossacks, who had literally torn him to pieces. He said he was an aide-de-camp; he said he was very cold; witness offered him brandy, but he chose wine; he then asked what he had to pay; witness refused to take anything, in consideration of the news he brought; but he threw down a napoleon, and desired the servants might have something; he went away in another hired chaise and four, driven by Thomas —— and James Overy; he identified the defendant, De Berenger, to whom he could swear.

Upon his cross-examination by Mr. Richardson, he said he had never seen the defendant before or since; the witness added that he had a large white cockade, very dirty, as if it had been a long time worn; he had no doubt as to his identity.

James Overy remembered taking up a gentleman on a Monday, and driving him to Dartford; he was dressed in a great coat and cap, with white ribbon hanging; he had a star and medal; he gave the boys a napoleon apiece, and paid the chaise with a 5*l.* note.

William Tozer, landlord of the Crown and Anchor, Dartford, remembered the last witness bringing the chaise to another

house in the town; he spoke to the gentleman, who said Buonaparte was dead, &c.; he saw him give the boys two gold pieces, with something in French upon them. He could not now recognise the defendant De Berenger as the gentleman.

Thomas Shelley drove the gentleman from Dartford; he had the wheel horses; the waiter of the Ram Inn, Dartford, asked the gentleman if he brought any good news. He answered, 'Yes, Buonaparte's dead; the Cossacks fought for a share of him, and cut him in a thousand pieces. The Allies are in Paris.' Upon the road, when they got to Bexley Heath, the gentleman asked if the telegraph could work. The witness replied, 'No;' it was very thick. The gentleman then said, 'Don't take any notice of the news as you drive along; but you may tell as you return.' He then said he had sent to the Port-Admiral at Deal to set the telegraph at work; he had walked two miles since he came ashore near Dover. When they came to Shooter's Hill, he gave the boys some wine and brown cakes; he asked, which was the first coach stand; witness said, 'The Bricklayer's Arms,' and asked why he wished to know. He then asked whether there was not another in Lambeth Road; witness replied, 'Yes,' and he then said, 'Drive me there;' witness drove him to the Three Stags, but there was no coach there, and he then drove to Marsh Gate, by the side of a hackney coach, into which the gentleman stepped without getting on the ground; he then gave the witness two napoleons, which he had now. The gentleman was dressed in a dark great coat and fur cap, laced with either gold or silver; witness saw a red coat underneath, and some sort of star, which he should know if he were to see. He identified the defendant, De Berenger, of whom he had no doubt. He had seen him once in Dean Street, Westminster, and knew him again.

Upon being cross-examined by Mr. Richardson, he said, he had heard of the reward for apprehending the defendant; he belonged to a hat-club at Dartford; he had described the gentleman as having a large red nose, and so it was red that morning, for it was very cold; he identified the waterman to be William Bartholomew, who remembered the last witness coming with a chaise and four on Monday 21st of February, about 9 o'clock; he said the gentleman got out of the chaise into the coach, of which the witness opened the door. The gentleman had a brown cap on and a military great coat; underneath was a scarlet laced coat. He ordered the coach to drive to Grosvenor Square or Grosvenor Street. He pointed out the defendant,

De Berenger, as the gentleman, but he only saw him half a moment.

William Barwick, clerk to Messrs. ——, bankers, Pall Mall, remembered passing near the Marsh Gate on the morning in question, and seeing a chaise and four stop, and a man get out of it into a hackney-coach, which he followed to the Haymarket, because he was told the person brought some news. He saw enough of the person to know him again, but could not now swear to him.

William Crane, driver of the hackney coach No. 890, remembered taking up a gentleman on the morning in question out of a chaise and four, at the Marsh Gate, and drove him to Grosvenor Square, when he put down the glass, and ordered to be driven to No. 18, Dean Street. He went in there, and gave the witness 4*s.*; the witness hoped for another shilling. Witness had since seen defendant at Dean Street; and now pointed him out. He saw his red coat underneath his brown great coat; he had a brown cap with gold lace.

George Odell, fisherman, remembered fishing up part of a bundle at Old Swan Stairs; it was tied up with a piece of line, covered with chair-bottom; the coat was embroidered with a star and coat of arms, three birds. It was sunk with lead; he gave it to Mr. Wade, Secretary of the Stock Exchange Committee; he picked it up on Wednesday, the 24th of March, and carried it to him on the Saturday following.

Mr. Francis Payne was present when Mr. Wade received the parcel from Odell, and identified its contents.

Mr. Wade proved the receipt and delivery of it to Mr. Lavie; the star was then in two pieces; it had been since sewn together.

Mr. Solomons, military accoutrement maker, Charing Cross, and New Street, Covent Garden, remembered on Saturday, the 19th of February, a military great coat being purchased, with a fur cap and pale gold band. The cap produced resembled that he sold, as nearly as he could possibly tell. The purchaser came to the shop at Charing Cross and took away his purchases there, and at New Street. He also bought a uniform coat and a badge and star, the same as that produced. He had the fellow star to it, and never saw another. The badge came from New Street. He believed the fragments produced to be of the dresses he sold. The purchaser said he wanted them for a person who was to perform the character of an officer, and that they were to be sent into the country that evening. He took them away

in a coach; he had a small portmanteau with him; he did not object to the prices; witness had since seen the person in Parliament Street coffee-house; the person whom he served had whiskers, and he could not now say the defendant De Berenger was the same person.

Mrs. Davison resided near the Asylum in February last; the house is within the Rules of the King's Bench; the defendant De Berenger lodged with her. He finally quitted the house on Sunday, the 27th of February; on the Sunday before she saw him in the morning; she could not say whether he slept at home that night; she usually heard him in the morning, but not on Monday morning, the 21st; he used to ring hisbell for the servant more than once; he occupied the whole of the upper part of the house; he used occasionally to play the violin or the trumpet, and walk about; he then wore whiskers; she generally heard his bell ring; she did not see him come home on that Monday, but at a quarter, or half-past five she saw him, and heard him in the afternoon; the day before he quitted she remembered a gentleman calling with a letter, whom she had since seen again in the Temple; Mr. Lavie was present; she could not say it was positively the same, but she thought it was; the defendant De Berenger had two servants, Smith and his wife; they always attended him when he dined at home. On Sunday, the 20th, he did not dine at home; his usual hour was four, and his servants went out to dinner at two or half-past that day. There was a private place in the area where the key was always put; it was that night in the care of Smith.

Upon her cross-examination by Mr. Park she said she did not attend to the door, and never went into his room.

Upon her re-examination she said her husband remarked that morning that the defendant had gone out in a new great coat.

Mr. Lavie said that the last witness, when in the Crown Office, pointed out the defendant Cochrane Johnstone, who was striking the jury, as the person who brought the letter to the defendant De Berenger. She had a conversation with Smith, his servant.

Mr. Lancelot Davison, husband of the former witness, remembered seeing the defendant go out on Sunday, the 20th; he had come in ten minutes before; he went out with a new great coat, as the witness observed to his wife; he did not hear him the next morning, but witness went out at nine o'clock; he usually heard him before that time; his servants went out at

two o'clock and were not home at four. He had a conversation with Smiths about that night.

Upon his cross-examination by Mr. Richardson, he said he had nothing to do with the defendant's movements, but he generally knew when he came home by a very loud rap at the door, and he had very few visitors. Witness is clerk to a broker.

Mr. Finn, in consequence of a note left at his house, went to the Carolina coffee-house on the morning of the 15th of February; he there was met by the defendant M'Crae, whom he had known before; he told him he had an opportunity of making his fortune; it was a scheme he had in contemplation, employed by men of affluence and consequence, and he thought no man more competent to it than the witness. Upon being asked if there was anything of moral turpitude in it, he said there was none; it was practised daily by men of consequence—it was nothing more than biting the biters, by a hoax on the Stock Exchange; witness asked him in what way he could do that; he replied, by going to Portsmouth or Dover, as he should receive instructions, and *that* that evening; but it was necessary to have two dresses; witness here stopped him, and asked whether he really meant him to be thus employed; to which he replied 'certainly,' and he should be in the first place remunerated, and afterwards have a fortune; witness replied he would as soon be concerned in a highway robbery; he thought he had known him better; witness raising his voice, he endeavoured to hush him, saying they would be overheard, and then took him out of the coffee-house. The witness recollecting that this could yet only be proved on his own testimony, told him he would introduce him to a person who might do it for him, and took him to the Jamaica coffee-house; witness was going to introduce him, but he refused; witness gave M'Crae the French terms of *Vive Louis XVIII.*; he proved M'Crae's letter of invitation to him, which was read.

Upon his cross-examination by Mr. Alley, he said, he was an accountant; he immediately made the offer public; he gave him the French that it might be heard by other persons, and he might have confirmatory evidence.

Sarah Alexander, of No. 64, Fetter Lane, knows Mr. M'Crae, who lodged on the same floor with her; he is a married man and his wife was with him. On Saturday night, the 19th of February, he came into witness's room, where his wife was, and gave her a small parcel, which he said was of value, and

she should take care of; on Sunday, between ten and eleven o'clock, he went out, and returned before twelve, bringing two coats and two opera hats in a bundle. The coats were officers' dark blue, embroidered with worsted, one lined with white silk, the other inferior. One of the hats was better than the other; one had a brass plate and a gold tassel at each corner; he put them on and asked whether he looked like an officer; the witness said he did; he then went out again and came home before one o'clock, bringing some white ribbon; he wanted two cockades made, and applied to his wife; she asked what they were for; he said to deceive the *flats*; he put the cockades in his pocket, and took the hats and coats in a bundle, and said he must be at Billingsgate by two o'clock to go to Gravesend. She saw him again the next day at a quarter before two; she met him in Cursitor Street, he gave her 1*s*., and asked her to get his dinner; he brought home one coat and hat; the best of each. He said he had slept at Northfleet, but he appeared not to have been in bed at all. He brought the cockades back in his pocket; the ribbon was taken off, and the paper on which they were formed was thrown into the fire. They took the white lining out of the coat and carried it to the dyers to be dyed black. He came to the house before the witness; she commenced in September; coals were very dear, and the witness and M'Crae kept but one fire; he never had any money except 1*s*. or 1*s*. 6*d*. After the expedition he had a 10*l*. note and a 1*l*.; the day before he finally left his lodgings, he had two 2*l*. notes; that was the 2nd of March; on the Sunday after he bought a new coat and hat; he said he was to have 50*l*. for what he had done. When he went away altogether he seemed very much agitated, and wished nobody to know whither he went. Witness desired him not to tell her that she might not know.

Mr. Foxall, landlord of the Rose Inn, Dartford, received a letter, which was produced, from the defendant Sandom. In consequence, he sent a chaise to bring a party to Dartford.

The letter was then read, ordering a chaise and four, in the name of Mr. Sandom.

The witness then proceeded to depose that Mr. Sandom and two other gentlemen came in blue clothes and cocked hats, with white cockades. The witness asked them to breakfast. Mr. Sandom refused, and said, they had breakfasted at his house; they had been in an open boat all night, and were much fatigued. Witness asked who they were. Mr. Sandom said he

did not know, but they had news of the utmost consequence, and desired good horses.

Upon his cross-examination by Mr. Serjeant Pell, he said he received the note at seven o'clock in the morning. He knew Mr. Sandom only by his having horses for nine months before to take him to Northfleet, where he lived.

Foxall Baldwin, post-boy from the Rose, rode on the morning in question, and recollected a chaise coming from Northfleet with Mr. Sandom and two other gentlemen. He drove the leaders to town. They gave orders to walk some little distance, and not to distress the horses up the hill. They promised 12*s.* to each of the drivers. His fellow-driver ordered him to go over London Bridge, down Lombard Street, along Cheapside, over Blackfriars Bridge, down the New Cut, and, when in sight of the Marsh Gate, to stop. Mr. Sandom was in a brown great coat; the others in blue. When they got in the chaise they had military hats; the horses had laurels. When they arrived in sight of the Marsh Gate they stopped, and the passengers walked away in round hats. It was about eleven o'clock. Mr. Sandom did not pay the chaise then, or give them anything, but asked at what house they slept, and came to the witness there. He gave the other driver a 1*l.* note and 4*s.*, but did not pay for the chaise.

Mr. Bailey deposed that the defendants, Messrs. Holloway and Lyte, attended the Stock Exchange, and at first denied all knowledge of the transaction, but afterwards, when the bill was found, acknowledged that he (Holloway) had committed the fraud with a view to obtain money by the rise of the Funds, and that he (Lyte) had been employed by Mr. Holloway. Mr. Lyte added that he, Sandom, and M'Crae had ridden in the chaise from Dartford to London. Messrs. Wakefield, Lavie, and Chaumette were present at this confession. Holloway said he was not aware of the serious turn it would take, but finding it had done so, he would come forward and confess it, in the hope that the Stock Exchange would not pursue it to extremities. He was asked whether he had any connection with Lord Cochrane, or Mr. Cochrane Johnstone, or Mr. Butt. He denied he had. On his cross-examination by Mr. Serjeant Pell, he believed that Holloway stated that he would communicate all he knew of the business, because M'Crae had offered, for a large sum of money, to come forward as a witness.

Upon his cross-examination by Mr. Park, the witness meant to include De Berenger in Mr. Holloway's denial of connection.

Mr. Joseph Fearn had known the defendant Mr. Butt several years, and was introduced by him to Mr. Cochrane Johnstone and Lord Cochrane. In February last he was employed by them as a broker. His office then was at No. 86, Cornhill. Somewhere about that time Mr. Butt had an office in Sweeting's Alley. From the 12th to the 19th of February he saw Mr. Butt daily at both their offices. He was frequently with Mr. Cochrane Johnstone and Lord Cochrane. When he did business for Mr. Cochrane Johnstone he sometimes received orders from Mr. Butt, which the former always recognised. He made various purchases and sales for them between those times. On the evening of the 19th the balance of Lord Cochrane's omnium account was 139,000*l.* in his favour; of Mr. Cochrane Johnstone's omnium, 120,000*l.*; of his consols, 100,000*l.*; of Mr. Butt's omnium, 150,000*l.*; of his consols, 168,000*l.* On the morning of the 21st of February the witness sold them all. He had previously removed to No. 5, Shorter's Court, close to the side door of the Stock Exchange. There were three rooms, of which witness had one and a small closet, Mr. Butt the other, and the third was occupied by Lord Cochrane and Mr. Cochrane Johnstone. The ground floor was occupied by Mr. Lance, who was employed by them. Mr. Cochrane Johnstone and Lord Cochrane had taken the two rooms for themselves, but witness, wishing to have an office there, requested them to take the whole of it. This was in the course of the week preceding. The whole are now in witness's possession. On the morning of Monday, 21st February, he saw Mr. Butt and Mr. Cochrane Johnstone about ten o'clock; they were in the office usually as early as himself. He thought nobody else was with them. Consols opened on Monday morning pretty much as they left off on Saturday evening. At nearly eleven o'clock news arrived at the Stock Exchange of a messenger from Dover, and Buonaparte's being killed. Mr. Cochrane Johnstone and Mr. Butt were with witness when he heard the news. Its effect on the Funds was immediate. He began to sell before the rise. The first price he sold at was 29$\frac{1}{8}$, the next $\frac{3}{8}$, $\frac{1}{2}$, and 30$\frac{1}{8}$. He sold the consols at 70$\frac{5}{8}$, 71$\frac{1}{8}$, $\frac{7}{8}$, 72, and 72$\frac{1}{4}$. He came backwards and forwards to report what he had done to Mr. Butt and Mr. Cochrane Johnstone, and receive their orders. He heard of a post-chaise coming through the City, but could not say whether that occasioned a further rise in the Funds. Before business left off the Funds fell again, it being discovered the news was not true.

Upon his cross-examination by Mr. Serjeant Best, he said

that all three had bought and sold to an enormous amount before the 8th of February, and long antecedent to the month of February, hundreds of thousands of omnium. Before the 21st they had all three made large sales. He had been before directed to sell the omnium whenever he could get 1 per cent., and when he came there at ten o'clock he found he could comply with that direction. He had began to sell before they came. He had before sold 20,000*l.* or 30,000*l.* for them. He had heard it was sometimes the custom to sell stock which the vendor had not, when it was high; but neither of the three did so on the day in question. Mr. Butt had before an office in Sweeting's Alley, which he found inconvenient, and those in Shorter's Court were taken for him. Witness thought the situation convenient for himself, and suggested that he should like a room in the same house. In consequence Mr. Butt gave up his room to witness and took another in the same house. Witness put up his name on the Monday. His name was written on the blind which he removed from his former office. Finding that his employers liked the room, he desired Mr. Cochrane Johnstone to take a lease of the house for him. It had often happened of the three persons that when one bought the other sold.

On his re-examination, he said that on that day they all sold.

On being asked by a juror whether any of the stock which the witness sold for the defendants on that day was not in the possession of the defendants, whether they were not all *time* bargains, he declined to answer the question, lest he might criminate himself with regard to certain penal actions now pending.

Mr. Hitchins, stockbroker, had for some years past known Mr. Cochrane Johnstone, but had not done any business for him till this year. From February 8 to 19 he made various purchases for him. At the leaving off on Saturday evening, the balance in his favour was 250,000*l.* On Monday morning he saw Mr. Cochrane Johnstone between ten and eleven o'clock, as he was coming out of the Exchange. He received an order on the Saturday to sell 50,000*l.* at 1 per cent. profit, which he executed that morning before he saw Mr. Cochrane Johnstone—viz., at 29. He then ordered witness to sell more, which he did at 29, 29⅛, 29½, 30¾, and 30⅞, thus disposing of all Mr. Cochrane Johnstone had.

On his cross-examination by Mr. Topping, he said, Mr. Cochrane Johnstone's balance on the 15th was 450,000*l.*; on the

16th 200,000*l.* was sold; on the 17th he bought 50,000*l.* and sold 115,000*l.*

Mr. William Smallbones, stockbroker, on the 12th and 14th of February, had purchased for Mr. Cochrane Johnstone two 20,000*l.*, and sold them out on the 21st at 28½, 29¼, 29, and 29½, by order partly received on the Saturday before and partly on the Monday. He made purchases in omnium for Mr. Butt to the amount of 40,000*l.*, which was left as balance on Saturday, the 19th, and sold out on Monday, the 21st.

On his cross-examination by Mr. Scarlett, he said that Mr. Cochrane Johnstone's order was not on his own account. His order, received on Saturday, was to sell at ¼ profit. The opportunity did not occur on Saturday. Mr. Butt's purchases were on the 12th, 14th, and 18th February, and his order was to sell at ¼ or ⅜ profit. He had known him six months, and had been employed by him before. Mr. Cochrane Johnstone was in Mr. Butt's office when witness first saw him. A man might have made his fortune that day by selling for account, but he had no such orders.

Upon his cross-examination by Mr. Richardson, he declined answering a similar question to that rejected by the former witness.

Mr. J. M. Richardson, bookseller and stockbroker, is not a member of the Exchange: On the morning of Saturday, Mr. Butt applied to him to purchase 150,000*l.* omnium; the witness hesitated as to the extent, and purchased 20,000*l.* that morning; he received instructions at the time to sell it again, if he could get ¼ per cent. profit; he got ⅜, and sold again without communication; he afterwards purchased 20,000*l.* and 10,000*l.*, which he sold out on Monday at ¾ per cent. profit, in pursuance of orders received on Saturday.

Upon his cross-examination by Mr. Brougham, he said he had before applied to Mr. Butt to give him some of his business.

He declined to answer a question by Mr. Richardson, similar to that refused by the other witnesses.

Mr. Bailey had exact statements of the purchases and sales from February 8, furnished him by the stockbrokers, from which he made out a statement of balances. Mr. Cochrane Johnstone's balance of omnium on all accounts was 420,000*l.* on February 19, his consols 100,000*l.* Lord Cochrane's omnium balance, 139,000*l.*; Mr. Butt's, 200,000*l.* (24,000*l.* more than he had); Mr. Butt's consols, 178,000*l.* (sold only 128,000*l.*); uniting the whole three balances together, 759,000*l.* omniums, and 278,000*l.*

consols. If the omnium had been reduced to 3 per cent. it would have been 1,611,430*l.* Upon that amount the fluctuation of a single one-eighth would be above 2,000*l.* The profit made by the sales of 21st amount to 10,450*l.*—viz., 2,470*l.* to Lord Cochrane; 4,931*l.* 5*s.* to Mr. Cochrane Johnstone; 3,248*l.* 15*s.* to Mr. Butt. If no news had arrived on the Monday, no person could have sold to this large amount without depressing the market. The news arrived half-an-hour after business began; it had a gradual effect on the Funds. About the middle of the day there was a decline; stocks afterwards recovered. This was generally attributed to the chaise coming through the City. The second rise was higher than the first.

Upon his cross-examination by Mr. Park, he said the accounts were for time bargains; but no day was stated on the face of the accounts.

James Whitelocke produced a paper of prices of stock at different times in the day of the 21st February. Omnium left off on the Saturday preceding at 26¾, money price, and opened on Monday morning at 26½. It was, perhaps, 1 per cent. higher when no money was paid. In the course of the day it rose considerably after the news had arrived.

Mr. Charles Addis stated that a room had been taken in the house in Shorter's Court a few days before the 21st. He understood that Mr. Cochrane Johnstone took it for Mr. Butt. Afterwards he took three rooms in the house, and applied to him by letter to know whether he could purchase the house.

On cross-examination, he said that the three rooms are now in the possession of Mr. Fearns, who transacts his business there as a stockbroker. He understood that it was for Mr. Butt that Mr. Johnstone took the first room.

Mr. Pilliner, as broker to Mr. Holloway, had sold for him in the course of that day 10,000*l.* in omnium, and 14,000*l.* consols.

James Steeres, broker to the Accountant-General of the Court of Chancery, had invested that day to the amount of near 16,000*l.* in Consols, at the rate of 71⅝, to which they had risen upon that day.

Mr. Wright, of Panton Square, proved that he had frequent intercourse with Lord Cochrane in the months of February and March. His lordship had brought him an affidavit, which was afterwards published in the newspapers. At the time that Lord Cochrane gave him the affidavit, he said to him, that he had no idea that Captain Berenger could be concerned in so base a

transaction; but if he was concerned in it, he had given the Stock Exchange a good clue in that affidavit.

Lord Cochrane's affidavit was then read.

Mr. Le Marchant was the next witness. He had been acquainted with Captain Berenger for about eighteen months. Berenger had often told him that it was his intention to go to America, and settle there. Knowing his embarrassments, he asked him how he was to effect this? His answer was, that Lord Cochrane had kept a private purse for him, being a percentage for money made in the Funds, by advice that he gave. This conversation took place between the 10th and 16th of February, and, as he thinks, upon the 14th. He often spoke of his intimacy with Lord Cochrane and Mr. Cochrane Johnstone.

On cross-examination, he admitted the letter to Lord Cochrane, requesting a loan of money, and said that he had no correspondence whatever with Lord Cochrane, except by letter. Being asked by Mr. Best whether he would have given this evidence if Lord Cochrane had given him the loan, he answered that he certainly would not, in that case, have come forward, unless he had been compelled to do so: but, if brought forward, he could not answer otherwise. Being asked about his place, and whether he was not suspended by Government, he said positively that he did not conceive himself suspended, but kept merely to give evidence. He said that upon this occasion it was not he who had applied to the Stock Exchange, but they had applied to him.

The Honourable Alexander Murray was next called. He was himself a prisoner in the King's Bench, and had been acquainted with Berenger for about a year and a half. He had often heard Berenger speaking of his intimacy with Lord Cochrane and Mr. Cochrane Johnstone. He thought that it was about the latter end of January that Berenger had said that he had a plan in his head which would put many thousands into the pockets of Lord Cochrane and Mr. Cochrane Johnstone. He said to him, this must be like your plan of a Ranelagh. Oh, no, said Mr. Berenger, it is a much better thing.

On his cross-examination, he said that Mr. De Berenger was a man of considerable talents and taste, and had been consulted by Mr. Cochrane Johnstone on a plan of building something, to be called either Vittoria or Ranelagh, in the neighbourhood of Alsop's buildings. Mr. Berenger had drawn a plan, and a very beautiful plan, on this idea. He believed Mr. De Berenger to be a man of honour and integrity, and a perfect gentleman.

J. Farney, a servant of Mr. Basil Cochrane, proved that Berenger had visited at that house, and that Mr. Cochrane Johnstone had been present at times when he was there.

The Clerk to the Marshal of the King's Bench stated the names of the persons who were securities for Berenger for the Rules. There was a Mr. Cochrane, a bookseller, who was no relation to Lord Cochrane, and the gentleman who was now his attorney.

On his cross-examination, he said that he did not see Berenger on the 21st of February.

The officer who arrested Berenger at Leith, in consequence of a warrant from the Secretary of State, proved the memorandum-book and the several parcels of bank-notes that were taken either on his person or in his writing-desk.

On his cross-examination, he admitted that a gentleman from the Stock Exchange, who was present at the arrest, told Berenger that it was other men on whom they expected to fix guilt, or something to that effect.

A very long course of evidence was then gone into for the purpose of tracing the notes found upon Berenger.

Mr. Smallbones, a broker, proved that on the 19th of February he had given a cheque to Lord Cochrane for 470*l.* 19*s.* 4*d.* for stock sold.

Mr. Warmby, clerk of the house on which the cheque was drawn, proved that in payment of that cheque he had given a 200*l.* note, No. 634; a 100*l.*, No. 18,468; and another 100*l.*, No. 16,601. He gave a 50*l.* note, No. 7,375, and the rest in small notes.

A Mr. Lance proved the changing of the two 100*l.* notes, for which he received 200 1*l.* notes, which he gave to Mr. Butt.

On his cross-examination, he said, that he knew that Lord Cochrane had borrowed 200*l.* from Mr. Butt a short time before. (The tendency of the cross-examination was to show, that if, in this instance, 200*l.* of Lord Cochrane's money went first into the hands of Mr. Butt and afterwards to Berenger, it had been only handed over by Lord Cochrane to Butt, in payment of a debt due to him.)

John Bilson, a clerk in the Bank, proved that on the 24th of February, the two notes of 100*l.* each, last mentioned, were changed at the Bank for 200 1*l.* notes.

A parcel of 49 notes, found in Berenger's desk; another parcel of 67 notes, found in his writing-case, besides what were in his pocket, were then examined by two Bank clerks, who were

present, and compared them with their books, and they were identified to be notes that were issued among the 200 1*l.* notes which had been given to Mr. Butt's clerk in exchange for the two 100*l.* notes.

Mr. Bromby, a watchmaker at Hull, proved that he had sold Mr. Berenger a watch for 30*l.*, which was paid for in notes of 1*l.* each, upon which he had put his initials.

Upon being shown two watches that were found in Mr. De Berenger's writing desk, he said, that neither of these had been sold by him.

Mr. Lance also proved the presenting of a cheque drawn upon Messrs. Prescott and Co. for 90*l.* He had received in payment, and handed over to Mr. Butt, a bank note of 50*l.* and another of 40*l.*, which was No. 6,268.

Mr. Benjamin Bray proved, that, at Sunderland, he had given change of that 40*l.* note to Mr. Berenger, who then passed under the name of Major Byrne. He had no other Bank of England note for 40*l.* in his possession for a considerable time, and, therefore, he could speak positively to it.

After some more evidence as to tracing the notes, the case for the prosecution was closed at about 11 o'clock.

Mr. Park, on the part of the defendant, Berenger, suggested the propriety of adjourning the trial, not on account of the fatigue that the counsel had endured, but for the ends of justice, in order that the case of the defendants might be fairly heard.

Lord Ellenborough said, that for his part he was ready to go through with the trial, but should not object to its being adjourned till to-morrow. He wished, however, that the defence should be gone into, in order that some witnesses (alluding to Lord Melville and others who had been subpœnaed) who could not without great public inconvenience be obliged to attend another day, might be examined. When that was done, if it was considered convenient to adjourn, he had no objection.

Mr. Serjeant Best, Mr. Park, and Mr. Serjeant Pell, severally addressed the jury on behalf of the defendants. We shall give the substance of their speeches to-morrow. The Court adjourned at half-past three o'clock this morning till ten. No witnesses were examined.

THE evidence for the prosecution having closed, Mr. Serjeant Best stated the case on behalf of the defendants, Lord Cochrane, Mr. Johnstone Cochrane, and Mr. Butt. On the part of Lord Cochrane, he stated, that with respect to the bank notes, on which so much stress had been laid, not one of them had been traced to his noble client, and that they had come into the possession of Berenger in a way wholly unconnected with the subject of the present inquiry. With respect to the 200 1*l.* notes which had been given for two 100*l.* notes, the question was on whose account the notes had been received from the Bank; and it appeared from the evidence, that they had been received not on account of Lord Cochrane, but of Mr. Butt. Lord Cochrane was thus completely relieved from that part of the charge, as the notes for which the others had been received in exchange, had been paid not by him, but by Mr. Butt. The large sale of stock on the part of Lord Cochrane, which, at a first view, might seem to have a suspicious aspect, had been clearly and satisfactorily explained. On the part of the prosecution, it had, indeed, been stated that the noble lord had only speculated in stock a week previous to the 21st of Feb.; but upon cross-examination, it had appeared that in the November preceding, the noble lord had bought and sold stock to a large amount. On the propriety of the noble lord's conduct in engaging in such speculations he should give no opinion, nor was it at all necessary to the present enquiry; but consistently with the usages of the Stock Exchange, there was nothing in the conduct of Lord Cochrane that could not be fairly and honourably explained. To bring the charge home to Lord Cochrane, it should have been proved, that a particular direction for sale of stock had been given by the noble lord; but it appeared from the evidence, that the direction was a general one, and had been given a considerable time prior to the transaction which was the subject of the present enquiry. Lord Cochrane, during the sale of stock on the 21st, had not been present for a single hour, and this was also the case of Mr. C. Johnstone and of Mr. Butt. Another circumstance that com-

pletely exculpated Lord Cochrane from the charge of fraud, was, that all the purchases of stock on his part had been real, and not what was termed, in the language of the Stock Exchange, time-purchases. He had sold 180,000*l.* stock, which he had previously bought; but he did not sell a single shilling of which he had not been a *bonâ fide* purchaser. Had he been privy to the fraud, he would have speculated to a much larger amount, as he must have known, that before night, omnium would fall to its former level. On the part of Lord Cochrane nothing would be found to have been sold that had not previously been bought. His learned friend (Mr. Gurney) had argued from the suddenness of the sale; but how could he account for every purchase being real, when, by the practice of the Stock Exchange in making time-purchases, infinitely more might have been realised? To judge correctly of the conduct of an individual at a given time, the whole of it must be taken into view; and by taking into consideration the whole of Lord Cochrane's conduct on the day in question, his innocence as to any fraud would evidently appear. The mere sale of the stock in this case proved nothing. The other leading circumstance mainly insisted upon by the Counsel for the prosecution, was, that on the day in question Mr. De Berenger had gone to Lord Cochrane's house. But the mere circumstance of Lord Cochrane's having introduced into his affidavit the name of De Berenger, was sufficient to do away any suspicion arising from his having gone to his house. When Lord Cochrane printed his affidavit, he was fully aware of the consequence of introducing into it the name of De Berenger; and as appeared from the evidence of Wright, said at the time, 'I have no idea that De Berenger is the man; but if he is, I have given the Stock Exchange the clue.' No guilty man either would or could possibly have used such language. The inference from this circumstance, so far from unfavourable, was quite the contrary for his noble client.

The learned Counsel here proceeded to comment, at considerable length, on the affidavit of the noble lord, and in reply to an observation on the part of the Counsel for the prosecution, said that Lord Cochrane was fully aware, when he published that affidavit, that if it contained false statements, he was equally liable to be tried for perjury as if he had given false testimony in a court of justice. From the whole of the evidence, there was not the slightest proof of a conspiracy, or of wilful perjury. In the affidavit it was stated that Lord Cochrane had gone to see a man whom he had employed in the construction

of an optical machine, and this statement had been corroborated by all the witnesses on the part of the prosecution. The evidence of Murray was clear in favour of the facts contained in the affidavit, and also that of another (Le Marchant), who would hardly be suspected of any undue bias to the side of Lord Cochrane. (The learned Counsel here commented with much severity on the conduct of Mr. Le Marchant.) From their evidence, it had appeared that De Berenger had expected to go out to America under the protection of the noble Lord. How far Lord Cochrane acted properly in granting the request then made him by De Berenger was another question; but, however that might be, still the statement was true. Previous circumstances had pointed out to Berenger the house of Lord Cochrane as his natural asylum, and bore out the statements of the affidavit. Had he gone to the house of any man because he knew he was implicated in a conspiracy, he would (upon that supposition) have gone to the house of Mr. Cochrane Johnstone. Upon any other supposition, he had no pretence to repair to Mr. Cochrane Johnstone, which he had in the case of Lord Cochrane. The whole of the affidavit was confirmed by the whole of the evidence, and would appear from the testimony of the noble persons, some of the same profession with his noble client, whom he meant to call as witnesses. From their evidence, it would appear that Berenger had gone to Lord Cochrane under the pretence mentioned in the affidavit—an affidavit which nothing could have induced his noble client to make, but the knowledge that he had been foully aspersed.

The learned Counsel then proceeded, with much force and eloquence, to argue against the probability of the charge against Lord Cochrane from his situation in life, his hitherto unimpeached character, and the distinguished gallantry he had repeatedly displayed in the service of his country, and concluded by stating to the jury that he looked, at their hands, for a complete acquittal of his noble client from those calumnies by which it had been attempted to tarnish his fame.

Mr. Best then entered into an able and elaborate defence of Mr. Cochrane Johnstone, who he contended was equally clear from any imputation of fraud as his noble relation. The balance in his hands on the 14th of February had been upwards of 600,000*l.* stock, but on the 21st, the day of the fraud, had been reduced to 400,000*l.*, and it also appeared that previous to the 21st, he had sold out considerable sums; he also animadverted with much force on the want of delicacy on the part of the prosecutors, in

employing a Mr. Harrison, who had been formerly prosecuted by the brother of the defendant, to subpœna different members of his family.

The learned Serjeant afterwards proceeded to defend Mr. Butt, who, he contended, was equally free, with the other defendants, from the slightest intention of fraud.

Mr. Park and Mr. Serjeant Pell addressed the Jury on behalf of the other defendants. The Court adjourned at half-past three in the morning till ten of the same day.

Thursday, June 9.

The trial recommenced this day at ten o'clock; the Court was, as before, exceedingly crowded. Lord Lauderdale, Lord Melville, and Lord Yarmouth were on the bench. The Counsel for the defence were called upon for their evidence.

The letters of Le Marchant to Lord Cochrane were then put in and read (they have been already published), and likewise Lord Cochrane's answer, with Le Marchant's reply, stating that he would not be an evidence against him, that he believed all De Berenger's account to be diabolically false, and begging a loan of 12,000*l*. Le Marchant's statement of his conversations with De Berenger was also read.

Lord Melville was then sworn; he said Lord Cochrane had been appointed to a command under Sir Alexander Cochrane, who had applied to the Admiralty before he sailed on the behalf of De Berenger. Sir Alexander was desirous that De Berenger should accompany him to exercise the Royal Marines in the rifle, or to raise a regiment; that he should be satisfied with De Berenger as an engineer officer. He (Lord Melville) said he could not agree to the appointment, but if the Secretary of State or the Commander-in-Chief should sanction it, he should have no objection. Lord Cochrane was appointed to the *Tonnant* before Sir Alexander sailed.

Colonel Torrens, examined by Mr. Brougham, recollected an application made on the behalf of De Berenger by Sir Alexander Cochrane to the War Office; he wished to have him as a light infantry officer; this was in January; great difficulties and objections made to the request of Sir Alexander Cochrane, and the appointment did not take place, though taken into consideration.

Mr. Goulburn said, that applications had been made to his department by Sir Alexander Cochrane for De Berenger.

John M'Guire, ostler at Mr. Smith's yard at Chelsea, was well acquainted with the defendant's person, and remembered him on the Sunday in question. He remarked it was Sunday because he was in the Rules. He had lived at Chelsea before that time. It was a quarter-past six in the evening, at the yard gateway. He asked if the six o'clock coach to London was gone. Witness told him it was, and the seven would go in three-quarters of an hour. He said he could not wait, and went towards London. He mentioned this to his wife that night, viz. that he had seen Smith's master *at a quarter-past six*. The defendant went from Chelsea to the Rules.

On his cross-examination he said he had known De Berenger four and a half years. He told the defendant's servant, Smith, what he had seen on 6th March, and Smith said his master was not out of the Rules, and he was surprised at his being seen at Chelsea. He had a black coat, grey waistcoat, and overalls or pantaloons. He had no whiskers.

In answer to a question by Lord Ellenborough, he said he made the observation to Smith because he thought it wrong the defendant should be out of the Rules. The place was three miles from the Asylum.

Thomas Hopper, architect, saw Mr. Cochrane Johnstone's premises, Alsop's Buildings, two nights ago. He looked at the plans, which he likewise saw then, and a prospectus for laying out the plan. He could not say what was a reasonable compensation for the trouble of surveying, laying out, and planning, but thought from 200*l.* to 300*l.* might not be excessive.

Ann M'Guire, wife of the last witness but one, said that her husband did mention to her at the time what he had testified. It was the Sunday before Shrove Tuesday, and her first child's birthday. Her husband wondered whether the defendant had got his liberty or not.

Mr. Tregear remembered being at Mr. Donathorn's, cabinet-maker, York Street, Westminster, in February. He went on the 17th. He let his house, 39, Holborn, on that day, and stayed there till now. He remembered seeing De Berenger there twice on the 20th very particularly. The first time was between nine and ten in the morning; the last between eight and nine in the evening. He then stayed there half an hour. The witness had seen him there about making drawings of furniture for Mr. Donathorn. The witness is out of business. He was a hatter in Holborn. His wife and Mr. and Mrs. Donathorn were in the parlour in the evening. The defendant said he would not come

in to disturb the company, and retired with Mr. Do
The witness had no doubt of his person.

On cross-examination, he said he had not whiske
witness did not know whether he was used to wear the
did not look so particularly into a gentleman's face a
whether he had whiskers. (The witness had himse
whiskers.) The defendant had a black coat that ever
went into the garden with Mr. Donathorn; he did n
whether snow was on the ground; Mr. Donathorn want
alteration in the premises, and they went to look at
nine o'clock, in February. He had never seen the d
with Mr. Tahourdin till last week; he did not know t
acquainted before. The alterations in the garden were n
yet. He went to Mr. Tahourdin with Mr. Donathorn t
a witness; he did not know before last week that he wa
witness. He recollected the circumstances in the n
because Mr. Donathorn knocked at his door where he s
said De Berenger was come.

In answer to a question from Lord Ellenborough, h
had lately justified as bail in small sums twice. He
recollect whether he had been bail oftener.

Mrs. Tregear, wife of the last witness, said, t
Donathorn called her that morning, as there was a g
come to look over the house; she threw down the sash,
De Berenger in the garden; she saw him again in the
between eight and nine; she is sure he was the man;
not come in; and walked backwards into the garden
Donathorn.

On her cross-examination, she said it was not Mr. D
who called them. She could not say whether Mr. Don
the defendant applied the rod to measure the garden;
wet morning, the rain had cleared the snow. The
afterwards come into her room.

Mr. Donathorn remembered the last witness comi
with him, and very well seeing the defendant between
ten in the morning in question; he wanted to make so
tions in his garden, and the defendant came about ot
viz., furnishing Miss Johnstone's house in Great Cu
Street. He also remembered the defendant's comi
evening; they went into the back parlour then, n
garden. He came again about the same business: t
was going to make the house an inn, and the garden a
garden; the defendant was to make out a plan. In th

they had a ten foot rod. It was a damp cold morning, misty rain, and very cold.

On his cross-examination, he said the defendant came to town as a friend of Mr. Cochrane Johnstone. It was the witness that called Mr. and Mrs. Tregear. They afterwards went twice over that bed-room. Mr. Tahourdin was the witness's attorney, by the desire of the Hon. Cochrane Johnstone, who thinks himself very ill-used by a set of villains. The witness has commenced 135 actions against persons of the Stock Exchange; Mr. Cochrane Johnstone is to save him harmless.

Mr. Gurney proposed to call the Hon. Mr. Murray, but Lord Ellenborough thought it unnecessary. 'If you think this last part about the *alibi* requires a reply,' said his Lordship, 'You disparage the jury.'

Mr. Gurney then replied. He said that the learned Serjeant (Pell), who was concerned for the two defendants, who were implicated in what he had called the under-plot of this drama, had contended, that these were two separate and distinct conspiracies, and had insisted upon the acquittal of his clients upon this indictment, and very properly, if this were the case; but if this were two conspiracies, then had miracles not ceased; they were only two parts of one and the same conspiracy. In a conspiracy it was not necessary that every one of the parties should know all the others. It was enough if there was one general plan and end, and if each had his part assigned. It was plain that the persons in the second post-chaise from Northfleet were cognisant of part, if not of all the conspiracy. They were seen lending themselves towards its execution. There was their own testimony against themselves. The defendant M'Rae, when the plan was ready to be divulged, came forward to disclose, not a part of the conspiracy, but the whole. The learned Counsel for this defendant, who never abandoned his clients, had surrendered the defence of M'Rae; and the learned Serjeant (Pell) contended that the whole of Messrs. Holloway and Lyte's confession must be taken together, and they had expressly excluded the other parties. The learned Counsel then proceeded to comment upon the defendants' transactions at the Stock Exchange, and said that for them to get out without great loss, was in itself great gain; for it would be recollected, when the subsequent ill news arrived, omnium fell to 12 per cent.; and if this news had arrived on the morning of the 21st February, they would have been losers of 160,000*l*. As to their former large purchases of omnium, when once a man begins to buy, he must

go on to keep up the market; but the moment the false news arrived, they sold *all*. It had been seen that, previously to this, they were buying in all directions, and by all sorts of brokers; they wanted more than brokers thought it prudent to stake their credit upon buying. Upon the subject of the identity of the defendant, De Berenger, an *alibi* had been set up; but such an one as no man living would believe, and no two witnesses agreed in. His learned friend (Mr. Park) had promised them the testimony of two watermen who rowed the defendant across the Thames on this day, and remembered the circumstances from its being the first day on which the river was open. They had not been produced; but even if they had, this was a case unassailable by any *alibi*; for supposing the defendant's person had not been identified all the way as it had been, the learned Counsel had taken him up at Dover like a bale of goods, and had watched him all the way till he delivered him at the house of Lord Cochrane, and took his receipt for him. If he had not been identified by the boys all the way, he was by his Napoleons. Who was it that went to Lord Cochrane's? it was not pretended to be other than Mr. De Berenger. If this had been a case in which the lives of the defendants had been in question, instead of the case of a misdemeanour, had not many men been executed upon less evidence than this? If De Berenger was Du Bourgh, what became of all the criticisms on handwriting with which the Court had been occupied? Mr. Lavie had made repeated observation of the defendant's handwriting, having often seen him write, and made it with a view to the very proof in question, and he positively swore he believed the Dover letter to be in the defendant's disguised hand; but whether it was written by him or not, it was clear that he sent it to the Admiral of the Fleet. The defendant's witnesses had sworn that it did not resemble his *ordinary* handwriting; no, he was not such a fool as to write it as he wrote everything else. As Lord Yarmouth said, the letter in question was more angular and stiff. But those who disguise their handwriting are sure to betray themselves at the end of their task; and Lord Yarmouth testified that the capital R was very like that of the defendant's signature of his name, 'Random.' The learned Serjeant (Best) had laid a good deal of stress upon the defendant's (Lord Cochrane's) affidavit, who was said to be incapable of swearing falsely. Mr. Gurney should not have believed he could have done so some time ago. But he had dealt largely in speculation, and had involved himself so deeply, that there was no other way of extrication; and

then he involved himself still deeper in crime. The great agent of this fraud had been traced to Lord Cochrane's house in the dress of his fraud; and his Lordship's affidavit as to the dress he wore was without confirmation. His Lordship said that he had a grey military great coat, a *green* uniform, and a fur cap. Mr. Gurney had proved the uniform to have been *red*. But then it was said his Lordship's affidavit was made three weeks after the occurrence, and that he had confounded the green uniform, which he ordinarily wore, with the red one which he then wore. 'If I am to make an observation as to a man's dress,' said Mr. Gurney, 'give me the only time when he wears a particular dress; the circumstance of De Berenger's having then for the first time a scarlet uniform could not have escaped Lord Cochrane's observation. But if it had, there was the star and medallion!' But it was said that De Berenger could not wait on Lord Yarmouth in a green uniform because, forsooth, it was the uniform of his own corps, and one in which it would have been not etiquette to have gone! Lord Cochrane, therefore, accommodated him with a black coat. The affidavit also swore, that the signature of the gentleman who sent for him was written so near the bottom of the slip of paper that he could not read it; but it seemed that he found room to write a postscript at the foot of it. Two of Lord Cochrane's servants had not been called to confirm his affidavit; one of them, Davis, it was stated, was gone abroad with some Admiral, but no reason was given for not calling the maid-servant. His Lordship took credit for furnishing the name of the defendant, De Berenger; but *when* did his Lordship give this up? On the 11th of March, De Berenger having quitted London on the 27th February preceding, and being, as his Lordship had no doubt, out of the country. He had not gone to Portsmouth then, but to the north. The defendants had next proceeded to account for the bank-notes found in De Berenger's letter-case; they knew the prosecutors' case very well, and had prepared themselves accordingly. It was pretended that all these notes were given for drawings; for these, the defendant, De Berenger, had received 50*l.* on account; but no memorandum of this passed between him and Mr. Cochrane Johnstone. It was only noticed in a postscript to a letter from De Berenger to him, beginning with an *à propos*. Then came his letter to Mr. Cochrane Johnstone, in which he said that the latter had often been very pressing upon him to take money. When did this fit come upon him? on the 22nd of February. There was then a receipt from

Mr. Cochrane Johnstone for 200*l.*, and a promissory note for 200*l.* more. Mr. Butt, who was the same with Mr. Cochrane Johnstone, took one 200*l.* note to Messrs. Bond, to get it exchanged for two of 100*l.*, and then the same agent was sent to the bank to get the 100*l.* notes exchanged for 1*l.*'s. The same party performed the same offices for 200*l.* more. Of the former sum, sixty-seven 1*l.* notes were found in De Berenger's writing-desk; of the latter, forty-nine.

Lord Ellenborough then charged the Jury. He said this was an offence of great malignity, and charged eight persons with wickedly conniving to effect a public injury. The evidence of such an offence, it was not to be expected, could be collected from the *mouths* of the parties, but must appear from their *conduct*; and if it appeared that they all entered into conspiracy for the same purpose, and that their endeavours combined to effect it, a foundation for such a charge as the present was laid. The parties need not have seen one another before; as in the case of rioters besetting a house at different times for the same purpose; or of house-breakers, some entering into one part of a house and some into another, at the same time. The acts of these persons prove that they have a joint contrivance; and so it was from these offences, up to treason. It was enough if such a conspiracy operated to the prejudice of the public, without the conspirators deriving any private corrupt advantage. The detriment which the public received from this false elevation of the funds was proved by the sum purchased by Mr. Steers that day as broker for the Accountant-General; and every one of the suitors of the Court of Chancery for whom stock was purchased on that day was a loser by so much as the stocks had risen in price on account of this false news. If it appeared that the Northfleet expedition was auxiliary to the Dover one, then the defendants were all guilty of the same conspiracy; and the Jury would say whether they were not parts of the same; they servilely copied each other; in both the instruments employed were disguises; these disguises were in both military; in both false news was to be propagated. The link between the two was proved by the defendant M'Crae's confession. He was to offer himself up for 10,000*l.*, and of this sum Mr. Cochrane Johnstone made the extraordinary proposal of advancing 3,000*l.* Why did he this, but to mislead the public, and make them think that M'Crae was the sole artificer in the fraud? The first question for the Jury was, whether the defendant De Berenger was the man who, on the 21st of February, at one o'clock in the morning,

was taken up at Dover, and ultimately brought to the house of Lord Cochrane himself. If the telegraph could have been worked on that morning, the 50,000*l.* would have been bought before De Berenger arrived in town, at the best time of the day, when the news was fresh. Upon the character of the Dover letter, Lord Ellenborough observed, that it was written in an upright, artificial, unnatural hand, no two words alike, as men ordinarily write. But supposing it not to be written by the defendant: if he had meditated this fraud, was it not easy for him to bring the letter with him ready written, and to go through the farce of writing at the inn? An *alibi* had been set up; but never since his Lordship had been present in a court of justice, had he been so strongly convinced of the truth of evidence as of that which this *alibi* sought to overthrow. The witnesses who identified the defendant threw their eyes about in every direction of the Court, and then, as if struck by electricity, fixed upon the defendant; this was the case in every instance but one, in which the question was put 'Is this the man?' as is every day done in criminal trials, with respect to prisoners at the bar. The trifling variations in the witnesses' evidence confirmed the testimony, and excluded all idea of previous contrivance. If they were not to be believed, then every man who had been hung from the Old Bailey had been murdered; all former evidence as to identity was so much weaker than this. As to the *alibi*, where did the defendant *dine* on the day in question? that had not been proved. His Lordship reprobated the phrase *hoax*, which had been applied to this fraud by the defendants' letters; it was a robbery, a fraud upon the public, and was not to be treated as a matter of pleasantry. His Lordship then recapitulated the whole evidence, commenting thereupon as he proceeded. The Bricklayer's Arms, he said, was too near the King's Bench for the defendant to stop at. Having hunted down the game, the prosecutors at last showed what became of his skin; and it was a very material fact, that the defendant De Berenger stripped himself at Lord Cochrane's. He pulled his scarlet uniform off there, and if the circumstance of its not being green did not excite Lord Cochrane's suspicion, what did he think of the star and medal? It became him, upon discovering these, as an officer and a gentleman, to communicate his suspicions of these circumstances. Did he not ask De Berenger where he had been in this masquerade dress? It was for the Jury to say whether Lord Cochrane did not know where he had been. This was not the dress of a

sharp-shooter, but of a mountebank. He came b
Cochrane fully blazoned in the costume of his crime.

His Lordship then proceeded to read to the Jury
of the evidence, which took up nearly two hours. H
that as to Holloway's admitting to the Stock Exch
mittee, that he himself was concerned in a plan of
formed for the purpose of raising the price of Funds, b
that in that plan he was at all connected with De B
the Cochranes, this was a matter for the Jury to take
serious consideration. They would consider whethe
admitted gave evidence to what he had denied, or w
scheme of deception was not one of the ramificatio
general plan charged in the indictment. As to M
swearing that De Berenger's bed had the appearan
morning of the 21st, of his having slept in it, it mi
have that appearance if he had only laid down a sh
it. After his Lordship had finished the reading of th
he told the Jury that the whole question was now be
and that they must see that it was not only a gr
question; but a question of great interest to the i
concerned. If they believed that the persons indicted
connected in the scheme of raising the price of the Fu
manner which was stated by many witnesses, and fo
poses charged in the indictment, they must find the
concerned guilty. It was their province, from the evi
had heard, to say whether any or all the persons ind
guilty, or whether they believed some of them guilty,
not guilty.

The Jury then withdrew for about two hours and a
on their return found all the persons indicted—*Guilty*.

APPENDIX D.

The Parliamentary Debates, by T. C. Hansard

June 24, 1814.

Vol. xxviii., pp. 238–243

The *Attorney-General* (Sir William Garrow) declared, that he rose on this occasion with very unpleasant sensations. If, consistently with his duty, he could do anything to meliorate the situation of the noble Lord in question, it would afford him a high gratification; but he apprehended that it would be impossible for him to accede to the present motion consistently with his respect for the due administration of the functions of Parliament, which he could not consent should be used for purposes that, however they were considered, must embarrass their proceedings, foreign as they were to the legitimate objects which Parliament ought always to keep in view. It was impossible for him to acquiesce in the motion consistently with his respect for that sacred institution—the trial by jury. For what was it proposed to the House to do? To review a conviction by a jury! To sit as a Court of Appeal—to sit as a Court of Error on the facts on which a jury had pronounced a verdict! If it were proper to do this, ought not the House in point of justice to go a step further?—to permit the prosecutor to appear at the Bar and amend his case, and to permit the defendant to add new evidence to that which he had adduced in the Court below? This, however, at once appeared so anomalous—so inconvenient—that the very mention of it seemed to alarm the hon. gentlemen.

On the general merits of the case itself, he would cautiously abstain from uttering a single syllable; for, compelled as he was to resist a proceeding by which it was supposed the situation of the individual in question would be ameliorated, he was particularly anxious at least not to make any observations which might be prejudicial to that situation. He was sure also that the House would not expect, from such an humble individual as himself, that he would conduct himself so indecorously and improperly, as to attempt to vindicate the judgment of a Court formed according to the institutions of the country—a Court, the members of which, he would venture to say, were

as distinguished by learning as any that ever sat in Westminster Hall, and who were not more distinguished by their learning than by their strict and uniform attention to justice. He, therefore, only laid in a claim, if the sentence of that Court had experienced the universal censure which the hon. gentleman opposite declared that it had, to have it considered as the result of deep and impartial deliberation on the part of persons of high and unimpeachable honour, who were in every way calculated to discharge, with advantage to the country, the important duties confided to them. Whether the circumstances of the rank and station of the individual in question, or the services which he had formerly rendered the country, might be deemed fit matter for representation in a quarter to which a proper appeal was never made without success, he would not say; but this he would say, that the House of Commons would depart from their constitutional functions if they entered into a consideration whether the punishment inflicted by one of the Courts of Westminster Hall was too great or too little in its amount. There was one most grievous error, on which an hon. gentleman opposite (Mr. Browne) had founded a great part of his argument. He had spoken of certain technical rules, which had prevented the party convicted from obtaining a revision of the verdict pronounced against him; and had stated that that party complained of the injustice of the verdict. Now, really, he (the Attorney-General) had never, in the whole course of his practice, met with a single case of a person so convicted, who had paid the Court a compliment on his conviction, by abstaining from inveighing against it in similar terms. If the noble Lord inveighed against his sentence, therefore, he was in a numerous class. But the hon. gentleman had maintained that the individual in question had taken every possible means to obtain a re-hearing of his case, but in vain; because the practice of the Court was so fenced round by technical rules, that all his efforts were thereby rendered abortive. The direct contrary of all this was most unequivocally true. It became necessary for him to state what had actually been the course of proceeding, in order to show that there had been no impediment obtruded, no technical rules, no fencing round, according to the allegations of the hon. gentleman. There was a rule of Court which provided that in the case of several persons convicted of a conspiracy, if any one of them came into Court and desired a new trial, his request could not be granted until the other conspirators should come into Court

that if several persons were convicted of a conspiracy, and one, probably the least implicated, were, on coming into Court, to apply for and obtain a new trial, all the rest would be entitled to come in and take the same benefit; but in the event of his not obtaining a new trial, those other persons, though the most deeply involved in the crime, would have the best opportunity afforded them of eluding the punishment. This was the technical rule. It was with great pleasure, however, he stated, that no technical rule, however wisely formed, or however long it might have been acted on, was permitted in a British court of justice to work injustice towards anyone. The Court would find a season for doing justice. It would make technical rules bend when they stood in the way of substantial right. What had been the course of proceeding in the recent instance? The grand jury had found a true bill against De Berenger and others for a conspiracy. The defendants could not have been compelled to take their trial until the sittings after term (ten or twelve days after the period at which he was addressing the House), but both parties, the prosecutors and the defendants, made an earnest application to the Lord Chief Justice to derange the ordinary forms by accelerating the trial. To the prosecutors his Lordship said nothing. The wish of the defendants he would not listen to from their attorneys or any ordinary agents; but required that their counsel should appear in Court to make the application. This being done, the Lord Chief Justice in consequence (to the inconvenience of all other suitors in the Court) did appoint an early day for the trial. At the trial the defendants were defended by persons highly eminent for their talents and legal knowledge. They were tried by a special jury of the City of London, reduced by one of themselves, Mr. Cochrane Johnstone. By that jury they were found guilty. On a subsequent day, within the period prescribed by law, the individual to whom the present conversation principally related, applied in the Court of King's Bench for a new trial; commencing his application by stating that he understood it could not be made by counsel. In this statement he was corrected by the Court. And he was also told, as other persons convicted of a conspiracy had been told the same morning, that the Court could not hear a motion for a new trial in the case of a conspiracy, when one alone of those who had been engaged in the conspiracy made the application. The Askews had that morning made an affidavit that they could not bring into Court the persons who had been convicted with them, and

yet they were told that unless they did so their appli
not be listened to. The noble Lord was told the san
House mark the sequel. The counsel for the defe
subsequent day moved for an arrest of judgment.
learned Serjeant, who was counsel for Butt, and wh
thing that he undertook with the greatest ability,
several others of the highest talent, moved for an ar
ment for his client. If Butt had succeeded in this a
if judgment had been arrested with respect to him, i
been arrested with respect to every one of those imp
him in the same offence. The Court, however, we
opinion, and delivered that opinion *seriatim*, tha
nothing in any of the points which had been urge
for an arrest of judgment. What was the next
The noble Lord did precisely that which the techn
the Court had prevented him from doing on the pr
He read from a paper, which was very ably written
evinced a profound knowledge of the law, a minute
lous examination of the evidence which had been ad
trial, and he then offered to the Court certain affidavi
of his application. Did the Court intrench itself
technical rules, or say that it was too late to grant

If persons convicted came up for judgment at th
six years from the trial, the Court would grant a new
thought fit. But the Court had heard from the no
that could possibly have been addressed in his f
paper which he read in Court was drawn up by no
and had evidently the finish of a master. As to t
affidavits, in a case like that in question, it was the c
of Court to refuse them. But what were the affid
by the noble Lord?

Mr. Horner rose to order. If neither the report
dence, nor the affidavits, were to be allowed to be la
House, it was not fitting that they should take an ac
contents of these affidavits, on the credit of any m
ever high his character in the House.

The Attorney-General was thankful for the inter
if the hon. and learned gentleman had listened
would have found that in the way he would have sp
affidavits, he had no intention of injuring the cause
Lord.

Mr. Horner said, he had not interrupted th
learned gentleman because he was afraid that he m

judge the cause of the noble Lord, but because he wished that nothing should be stated which might in any way prejudge the cause of either the prisoner or the Crown.

The Attorney-General merely wished to state, that no technical rules had stood in the way of the noble Lord. He did not mean to state the contents of the affidavits, because he did not know them himself, but merely the grounds on which they were not received. One of the affidavits contained the evidence of a servant who was examined at the trial; but it never could be permitted that a witness should be allowed to amend, retract, or detract from the evidence given at a trial—a practice which would be pregnant with the most dangerous consequences. Another of the affidavits was that of persons in attendance in Court, and capable of being called, but actually not called at the trial. Here he would appeal to the common sense of justice in the House if such an affidavit ought to be received? If such a practice were allowed, there would be an end to everything like a trial. The prisoners had the advice and assistance of the most able counsel; if they did not instruct the counsel to call those persons, it was their own fault; and if the counsel thought it upon the whole more advantageous not to call the witnesses, then this was no reason now to send the prisoners to a new trial. The prisoners were not, in fact, shut out from an act of justice. The Court had taken the propriety of a new trial into consideration, and in their judgment there was no ground for it. What was the object of the present motion? It was to grant a new trial in that House, because the jury had not come to a proper verdict on the facts before them. But the consequences of this would not apply to members merely, but must open the doors of the House wide to all the inferior subjects of the realm. They would have to re-try also the Askews, and others in their situation. He should think that nothing was calculated to give a deeper wound to the institution of juries, than for the House of Commons to take upon them to revise the testimony on which they came to their conclusions. With respect to the notes of Lord Ellenborough, they could not produce the effect on the House which was done on the jury, by the sight of the witnesses, traversing the Court with their eyes, and fixing on Berenger. The effect of the motion would be to place the House in the situation of a jury, without the sanction of an oath.

INDEX

ABBOTT, Mr. Justice (afterwards Lord Tenterden), 261, 262, 264, 280, 281
Abercromby, M.P., Mr., on the question of Lord Cochrane reading the briefs, 212, 309
Abinger, Lord, *see* Scarlett, Mr.
Accountant-General of the Court of Chancery, 14, 107
Adam, Mr., 44, 58, 60 *note* 1
Addis, Charles, his evidence as to letting offices in Shorter's Court, 106, 107
Adjournment of the trial, the question of the, 123, 149, 242, 248, 249, 251, 252, 293, 298, 305–315, 324
Admiralty, the, its alleged hostility towards Lord Cochrane, 19, 20 and *note* 1, 22; commission to inquire into its administration, 21 *note* 1; correspondence with Lord Cochrane, 40, 41, 340, 368
Adolphus, Mr., one of the Counsel for the prosecution, 58, 59, 108 *note* 1
Affidavit of Lord Cochrane of March 11th, 35–38; evidence at the trial respecting it, 107–109; Lord Ellenborough's comments upon it, 171, 172; its contents repeated in a sworn document (14th June), 180, 183–186, 202, 203; contradictory statements of Lord Cochrane respecting it, 338, 339
Affidavits of Lord Cochrane's servants and others, 42, 43, 187, 202, 219, 348, 350
Alexander, Emperor, 11
Alibi, De Berenger's, 77, 96, 138, 147–149, 159–163, 165, 169, 199
Alien Acts, De Berenger's breach of, 54, 57, 87
Allen, Mr., one of Lor
biographers, 19
Alley, Mr. Peter, Couns
62, 63 *note* 1, 123, 15
Anstruther, Sir Robert,
Select Committee and
chairman, 372, 375, 3
Arrears of half-pay,
donald's claim for, 3
Arrest of judgment, mo
194
Auckland, Lord, 15
note 3
'Autobiography of a S
tations from and allu
et passim; analysis
335–367; the assist
Earp and William Ja
production, 330–335
Bourne's assistance i
the additional volum
1, 273 *note* 1, 327

BAIL, livelihoods earne
as, 162 and *note*
Bailey, Mr. Francis, evi
105, 106
Bank notes used in
'Du Bourg's' payme
10; proof of issue in
19th February, 29,
found on 'Du Bour
rested, 81, 113, 117, 1
139, 140, 167, 171, 22
Cochrane's explanati
liament respecting th
passim
Bank stock, 3, 12; effec
port of Napoleon's d
14, 71
Banks, M.P., Mr., 205 a

Banner of Lord Dundonald, 291, 369, 376
Barham, M.P., Mr., 205
Barwick, Richard, evidence of, 92, 93
Basque Roads, affair of, 18, 19, 20
Bathurst, M.P., Mr., 205
Bayley, Mr. Justice, 187, 188 *note* 1, 281
Beresford, Captain Sir John Poo, evidence of, 159
Best, William Draper (afterwards Lord Wynford), one of the Counsel for Lord Cochrane, Cochrane Johnstone, and Butt, 60, 61, 89, 101, 102, 107, 108, 110, 111, 114, 115, 122, 307, 308; his address to the jury, 123–134, 140, 141; estimate of his speech, 134–140, 141, 142 and *note* 1; his explanation of the disposal of the bank notes, 139–142; moves in arrest of judgment on behalf of Mr. Butt, 179
Bill of costs, Messrs. Farrer's, 217, 275
Bill-case carried by Berenger, 260, 270, 272
Bish, Mr., action against, 48
Blucher, Marshal, 2, 4, 6
Bolland, Mr., one of the Counsel for the prosecution, 58, 59, 161
Bond and Co., bankers, 29, 82, 120
Bourne, Mr. Fox, 272 *note* 1, 273 *note* 1, 327
Bowering, Mr., evidence of, 154
Brand, M.P., Mr., on the motion for a Select Committee, 204
Brazil, Emperor of, Lord Cochrane's services to, 282
Brenton's 'Life of Lord St. Vincent,' 212
Brenton's naval history, 21 *note*
Briefs for the defence, the question whether Lord Cochrane read them, 199, 209, 210, 211, 212
Brienne, battle of, 1
Broadhead, M.P., Mr., his motions in Parliament relative to the trial, 193, 196, 203
Broochooft, Barnard, evidence of, 113
Brougham, Mr. (afterwards Lord), one of the Counsel for Lord Cochrane, Cochrane Johnstone, and Butt, 60 and *note* 1, 105, 120, 155 and *note* 1, 166 *note* 1; letters to Lord Grey on Lord Cochrane's expulsion from Parliament and the Westminster electors, 206, 207; his hopes of being elected for Westminster, 214; his allusion in Parliament to the re-election of Lord Cochrane, 214; Lord Chancellor, 284; his opinion that Lord Cochrane sacrificed himself out of delicacy to his uncle, 289 *note* 1, 337; on Lord Dundonald's restoration to the Order of the Bath, 290, 336; on the question of the adjournment of the trial, 308; his account of Lord Ellenborough's conduct at the trial, and his estimate of his character, 323–325; denies the statement relative to Princess Charlotte, 363
Browne, M.P., Mr. A., on the motion in Parliament respecting the trial, 193, 194; moves for a Select Committee, 203; withdraws his motion, 205
Brundrett, Wainwright, and Spinks, Messrs., solicitors for Cochrane Johnstone and Butt, 59
Burdett, M.P., Sir Francis, supports the motion for a Select Committee, 205; on the shorthand writer's notes, 210; proposes Lord Cochrane's re-election for Westminster, 215; supports the motion for an inquiry into the conduct of Lord Ellenborough, 251
'Burne, Major,' an alias of De Berenger's, 122
Burrough, Mr. Justice, judge in the case at the Guildford Assizes against Lord Cochrane, 275
Busk, Sarah, affidavit of, 187, 203
Butt, Richard Gathorne, 16, 26; his transactions on the Stock Exchange on February 19th and 21st, 29–31; pamphlet attributed to him, 46, 47, 49, 69; his action against Mr. Bish, 48; takes his trial with the other defendants for conspiracy, 69 foll.; Serjeant Best moves in arrest of judgment on his behalf, 179; applies for a new trial, 188; Lord Cochrane's allusions to him in Parliament, 200; actions against him for libel, 279–282

CABINET of 'All the Talents' ministry, misstatement regarding Lord Ellenborough's membership of, 356–361

Campbell, General, evidence of, 158
Campbell, Lord, 183, 192, 289 *note*; his 'Life of Lord Ellenborough' criticised, 296–323; misrepresentations in his 'Lives of the Chancellors,' 300, 301; his laudatory allusions to Lord Ellenborough, 301; his account of the trials of Leigh Hunt, Watson, and Hone, 353–355
Carling, William, evidence of, 113
Castlereagh, Lord, 196; opposes the amendment for a Select Committee, 205 and *note* 1; on privileged orders and the punishment of crime, 208; 255; his action for libel against Butt, 280, 281
Cathcart, Lord, 9 and *note* 1
Charges brought against Lord Ellenborough, 66, 149, 242–244, 293, 346, 347, *et passim*
Charlotte, Princess, a saying erroneously attributed to her in 'The Autobiography of a Seaman,' 363
Chatillon, Congress of, 2, 3, 4, 164, 304
Cheque drawn by Fearn payable to Butt, question of the, 82, 85, 115, 175
Chilian Navy, Lord Cochrane's service in the, 278, 282
Cobbett, William, 25; on the publication of the Stock Exchange Committee's Report, 32 *note* 2; discredits the identity of De Berenger with Du Bourg, 47 *note* 2; 210 *note* 1
Cochrane, Sir Alexander, 17, 24; his acquaintanceship with De Berenger, 39, 152, 153
Cochrane, Hon. Basil, 25; his acquaintanceship with De Berenger, 39; at the Davidson trial, 261; erroneous allusions to him by Lord Campbell, 303, 304
Cochrane, Major, affidavit of, 188, 198, 295
Cockburn, Sir Alexander, on the principles of a judge's charge to a jury, 225, 226; Dr. Kenealy's attack on, 254
Coins, foreign, reported sale to Lord Cochrane of, 43
Collusion between the Admiralty and the Stock Exchange, alleged, 343 and *note*
Colour-blindness, the suggestion that Lord Cochrane suffered from, 254 *note* 1
Committee for Privileges of the House of Lords (1862), and the evidence given relative to the compilation of 'The Autobiography of a Seaman,' 330, 331, 333
Committee of Public Safety, Lord Cochrane's alleged connection with the, 303
Committee of the Stock Exchange: its examination of witnesses relative to 'the hoax,' 16; publishes the names of suspected persons, 16; contents of its report, 27–31; discovers 'Du Bourg's' identity, 39; takes an account of the profits of Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt, 46; attacked by Lord Cochrane in Parliament, 197; issues a second report, 235–240
Cossacks, the, Napoleon's narrow escapes from, 8 *note* 1; report of Napoleon's death at the hands of, 8, 11
Counsel's opinion on a proposed action for libel against the Committee of the Stock Exchange, 44, 45
Crane, driver of hackney-coach, evidence of, 29, 93, 200, 287, 349, 350, 351
Croker, John Wilson, 10 and *note* 1; his correspondence with Lord Cochrane, 40, 41, 340; defends Lord Ellenborough from reflections made by Lord Cochrane, 204, 205

Dampier, Mr. Justice, 178
Dartford, landlord of the Crown and Anchor at, 'Du Bourg's' conversation with, 11
Davidson, Launcelot, his evidence at the trial, 95; his trial for perjury, 261–265
Davidson, Mrs., evidence of, 95
Davis, Isaac, his affidavit with regard to De Berenger, 40 *note* 1, 42; 127 *note* 2; 154, 186, 187
De Berenger, Charles Random (for events preceding his identification *see* 'Du Bourg, Colonel'); his identity with 'Colonel Du Bourg,' 36–39; Lord Cochrane's affidavit respecting him, 36–38, 127; intimacy with the Cochrane family, 39, 109, 113; question as to the

colour of his uniform, 7, 8, 28, 29, 37, 43, 48, 78, 86, 90, 93, 94, 135, 138, 155 *note* 1, 158, 159, 165, 166, 189, 268; his antecedents, 38, 39; his arrest, 48, 50, 81; discovery of the uniform worn by him, 48, 78, 93, 94; affidavit of his servant, 49, 122; the bank-notes found in his possession, 51, 81, 82, 113, 117, 120, 121, 132, 139, 171, 229; his admission of his identity with 'Du Bourg,' 85; his identification in court, 86, 87; Mr. Park's speech on his behalf, 144–149; evidence of his witnesses, 157–163; Lord Ellenborough's comments on his share in the fraud, 169 foll.; pleads in an affidavit for merciful treatment, 188; his work 'The Noble Stock-Jobber,' 256–261; his alleged communications with the Government, 341; invention of an explosive for use in war, 378, *note*

Decorations worn by De Berenger, 11; described by the Stock Exchange Committee, 94 *notes* 1 and 2; 345

Denman, Mr. (afterwards Lord Chief Justice), one of the Counsel for Holloway, Lyte, and Sandom, 62, 189; 289 *note* 1

Dewman, Thomas, evidence of, 42, 154, 155, 187, 202, 350

Dismissal from the Navy, Lord Cochrane's, 193

Donithorne, Isaac, brings *qui tam* actions on Mr. Cochrane Johnstone's behalf against members of the Stock Exchange, 48 and *note* 1, 163 and *note* 1; his evidence, 162, 163; 169

'Du Bourg, Colonel,' his arrival at the Ship Inn, Dover, 7, 8; writes to Admiral Foley, 8, 9; pays the landlord of the Ship Inn in bank-notes, 10; incidents at Rochester and Dartford on his journey to London, 10, 11; his explanation of his decorations, 11; hires a hackney-coach from Marsh Gate to Green Street, 12; a reward offered for his discovery, 16, 33; evidence respecting him before the Stock Exchange Committee, 28, 29; identified as Charles Random De Berenger, 36–39 (*see* De Berenger)

Durand, Mr., owner of the house in Green Street, 29

Earp, Mr. G. B., assists in the preparation of the 'Autobiography of a Seaman,' 330; his methods of compilation, 331–335, 341; the percentage for his services, 330, 370, and *note* 1, 380

Ebrington, M.P., Lord, his motion for mitigating punishment as regards the pillory, 207, 208

Ellenborough, Lord, supporter of naval reform, 21 *note*

Erskine, Lord, extract from a letter to Lord Cochrane from, 366

Escape from prison, Lord Cochrane's, 241; Lord Cochrane prosecuted for the act at the Guildford Assizes, 272–276

False war news, propagating, Gurney and the Solicitor-General on, 190 and *note* 1

Farrer, Messrs., Lord Cochrane's solicitors, 34, 43, 55, 58; allusions to them by the Solicitor-General, 209; questions addressed to them by Lord Cochrane, 216, 217; their bill of costs, 217, 275; their statement in reply to Lord Cochrane's attack, 218–221, 329

Fearn, Mr., stockbroker, his evidence before the Stock Exchange Committee, 29; 38, 73, 74, 82, 99–103, 115, 120, 231

Fine, Lord Cochrane's payment of the, 241; application for its return, 369, 370

Fluctuations of stocks in February, 1814, 3–5, 13, 14

Foley, Admiral, his doubts respecting the letter received from 'Du Bourg,' 9; his evidence at the trial, 87 and *note* 1

Gambier, Lord, 18, 19, 20, 334, 342

Garrow, Sir William, Attorney-General, declines a brief for the trial, 57, 303; on the motion in Parliament relative to the trial, 193, 194 and *note* 1; his defence of Lord Ellenborough, 203, 204, 252, 253, 311

Goulburn, M.P., Mr., evidence of, 153; 313, 314

Grampound, borough of, 26

Grant by the Government to Lord Cochrane's grandson, 379
Greeks, Lord Cochrane's services to the, 282, 283
Grey, Earl, 206, 284
Guildford Assizes, action against Lord Cochrane at the, 272–276
Gurney, Mr., 14 *note* 1; 44; briefed by the Stock Exchange at the trial, 57; attack on his conduct, 58 and *note* 1; Lord Brougham's tribute to him, 58 *notes* 1; his opening speech at the trial, 68–84; on De Berenger's decorations, 94; 113, 114, 116, 118; his speech in reply to the defence, 164–168; moves for judgment before the Court of King's Bench, 179; his speech after the motions for a new trial, 189, 190; counsel for the defence in the Davidson case, 261, 262; attacked by Lord Cochrane during the action of the marshal of the King's Bench, 274, 275, 339, 340

Hackney coach, hired by 'Du Bourg,' 12, 71; testimony of the driver, 29, 93, 200, 287, 349, 350, 351
Halsbury, Lord, on the trial, 367
Hamilton, Marquis of, 19
Hamilton, M.P., Lord Archibald, supports the motion for a Select Committee, 205
Handwriting, De Berenger's, the question of, 88–90, 113, 114, 157, 158, 159
Hastings, Warren, Edward Law's defence of, 64
Henty, Mr., 280 *note* 1, 381
Hichens, Mr., stockbroker, his evidence before the Stock Exchange Committee, 30, 74, 103
Holloway, Mr., 16, 26; his confession of participation in the fraud, 52, 98; indicted for conspiracy, 53; his sentence, 190
Holmes, M.P., Mr., his motion in Parliament respecting the trial, 193; on the question of Lord Cochrane reading the briefs, 211
Holroyd, Mr. Justice, 281
Hone, William, prosecution of, and Lord Cochrane's subscription towards the cost of defence, 276; 354, 355
Honiton election, 18
Horne, Sir William, 289 *note* 1
Horner, Francis, on t
the Stock Exchange
trace the authors of
note 2; opposes th
Parliament relative
194, 195
Hypotheses, three, ado
exculpation of Lord C

Impeachment of Lord E
attempted, 242–255;
Dr. Kenealy's motion
Alexander Cockburn,
Indictment for conspir
the eight counts, 68

Jackson, William, secr
Cochrane, 47 *note* 1,
share in the compi
'Autobiography of a
–333; his character,
influence on Lord C
334; origin of his i
Lord Cochrane, 335
Jenkinson, General, 36
Johnson, Captain, acti
the *Tonnant*, 40
Johnstone, Hon. Ar
Cochrane, 16, 25,
actions on the Stock
February 19th and
acquaintanceship wi
ger, 39, 109, 113;
Committee of the St
45; declaration in
Commons, 46; h
cation to the Sto
Committee relative
51, 83, 116; takes
reduction of the jur
54, 204; takes his
other defendants f
69 foll.; his flight
Calais, 196; his sh
according to De B
259; Lord Brough
to his guilt, 289
coupled with De
Lord Campbell, as
of the fraud, 298, 3
Jury, the, empanelli
names, 67; their
attacked by Lord
Parliament, 197, 20
them by Sir Francis
the question of th
before the adjournr

King, William, his evidence on behalf of Lord Cochrane, 153

Lance, Benjamin, his evidence on exchanging notes and the loan to Lord Cochrane, 117–119, 122, 141, 231
La Rothière, battle of, 1, 4
Laurence, Charles, Chairman of the Stock Exchange Committee, his evidence regarding the bank-notes, 29
Lavie, Mr. Germain, proves De Berenger's handwriting, 88, 90, 114; 115, 342, 343, 344
Law, M.P., Hon. Edward, his speech in defence of Lord Ellenborough, 246–248, 246 *note* 1, 322
Law, Mr. Ewan, 21 *note* 1
Law, Hon. Henry Spencer, 322, 375
'Law Magazine and Law Review,' on the trial of Lord Cochrane, 327–330
Le Blanc, Mr. Justice, 188
Le Marchant, Mr., his evidence, and correspondence with Lord Cochrane, 69, 109, 110 and *note* 1, 134, 147, 152
Letter said to have been left at De Berenger's lodgings by Cochrane Johnstone, 81, 95, 132
Letter sent by De Berenger to Admiral Foley, discussion on, 87–90, 169; De Berenger's account of it, 258
Letter of Lord Cochrane to Lord Ellenborough, 224–235
Libel, action for, against the Committee of the Stock Exchange, suggestion of, 44; actions against Butt for, 279–282
London Tavern, meeting at the, 273
Louis XVIII., congratulated at Hartwell House on the reported death of Napoleon, 15 *note* 1
Lyndhurst, Lord, misrepresentations in Lord Campbell's 'Life' of, 300, 301
Lyte, his participation in the under-plot, 52, 96, 98; indicted for conspiracy, 53; his sentence, 190

Markham, Admiral John, 21 *note* 1
261; one of the counsel in the action against Lord Cochrane at the Guildford Assizes, 273, 275
Marsh, keeper of the 'Packet Boat,' Dover, 7
Marshal of the King's Bench, his action against Lord Cochrane for escaping from prison, 272–276, 339, 340
Melbourne, Lord, and Lord Cochrane's petition to William IV., 288
Melville, first Lord, 19, 21 *note* 1; his impeachment, 66, 152 *note* 1
Melville, second Lord, 152 and *note* 1, 198, 204, appealed to by Lord Cochrane for a reinvestigation of his case, 283; 289, 361
Memorandum found on De Berenger, 81, 113, 114 and *notes* 1 and 2, 147
Memorial to the Duke of Clarence, Lord Cochrane's, 283
M'Guire, John, evidence of, 161, 162
Montmirail, Napoleon's victory at, 6
M'Rae, Alexander, 16, 26; his proposal to disclose the names of the authors of the hoax, 50, 51, 83, 116; Holloway's evidence relative to his participation in the fraud, 52, 98; evidence against him at the trial, 96–98; his flight at the close of the trial, 179; petitions Parliament, 195; his arrest and imprisonment, 195 *note* 1
Murray, Hon. Alexander, his evidence respecting De Berenger, 112; 163

Napoleon Bonaparte, 1–7; the report of his death, 8 foll.
Napoleons, the, offered to the landlord at Dover, question of, 10, 43, 85
Naval career of Lord Cochrane, 17–20, 24, 25
Naval reform, Lord Ellenborough's share in, 21 *note* 1, 65
Nelson, Lord, 21 *note* 1
New trial, Lord Cochrane's application for a, 178, 191, 202, 253, 298, 317–320, 348, 349
'Noble Stock Jobber,' De Berenger's, 256–260
North America and West India Station, Lord Dundonald appointed to the command-in-chief of the, 291

Northcote, Sir Stafford, on the motion for a Select Committee, 374
Northfleet plot, *see* Post-chaise and four
Nugent, M.P., Lord, on the motion for remitting the punishment of the pillory, 207

'Observations on Naval Affairs,' Lord Dundonald's, 291–294
Odell, the waterman, his evidence respecting the uniform found in the river, 48, 93, 345
Omnium, meaning of the term, 12; [pseudonym of Matthew James Higgins, 12 *note* 1, 13]; effect of the report of Napoleon's death on, 13, 14, 71; their fall on February 21st and 22nd, 14, 72; transactions of defendants in, 99, 100, 103–107, *et passim*
Order of the Bath, Lord Cochrane's degradation from the, 193; Lord Cochrane's restoration to the, 290

Palmerston, Lord, application of Lord Dundonald to, 369
Pamphlet against De Berenger, 96 *note* 1, 198 *note* 2, 257 *note* 1
Pamphlet of 1830 on Lord Cochrane's case, 135, 284–288
Pamphlet by Mr. Butt, 46, 47, 49, 69, 139, 188
Pardon and reinstatement of Lord Cochrane, 288–290
Paris, capitulation of, 2
Park, James Alan, one of the Counsel for De Berenger, 61, 62; his cross-examination as to De Berenger's identity, 86; on the question of the letter to Admiral Foley, 88, 89; 96, 98, 106, 114, 122, 123, 307, 308, 311; his address to the jury, 144–149, 153, 163; moves in arrest of judgment on behalf of De Berenger, 179
Parkinson, Mr., of the firm of Messrs. Farrer, 60 *note* 1, 155 *note* 1, 211
Parliament: motions respecting the trial, 193–195; petition of M'Rae, 195; Lord Cochrane's speech and his attack on Lord Ellenborough, 196–203; motion made and withdrawn for a Select Committee, 203–205; defence of Lord Ellenborough by the Attorney-General and Mr. Croker, 203, 204, 205; expulsion of Lord Cochrane and Cochrane Johnstone, 206; arrest of Lord Cochrane after his escape from prison, 241; Lord Cochrane's motion for a Committee of Inquiry, 242–244; Lord Cochrane moves for a Committee of the whole House, 246–253; appointment of a Select Committee to inquire and report upon the petition of Lord Dundonald's grandson, 372–379
Parliamentary career of Lord Cochrane, 18, 19, 21–24
Parliamentary Commission on naval administration, 21 *note* 1
Patent lamp, Lord Cochrane's, 25, 32, 35, 43, 57, 153
Peel, Sir Robert, petitioned by Lord Dundonald for a revisal of the verdict, 290, 337
Pell, Serjeant, one of the Counsel for Holloway, Lyte, and Sandom, 62, 98, 106, 308; his address to the jury, 149; 179, 189
Penny subscription, story of the, 276 and *note* 1, 369 *note* 1
Pension granted to Lord Cochrane (Lord Dundonald), 290
Pension list, debate on, 22
Petition of Lord Dundonald's grandson, 371
Pilliner, James, Holloway's broker, 107
Pillory, the punishment of the, 190, 320, 321, 352; Lord Ebrington's motion on, 207; the Crown quashes this part of the sentence, 208, 322, 212 *note*; Lord Campbell's criticism upon it, 299; abolition of, 299, 321
Plans for a recreation ground, De Berenger's, 112, 132, 147, 156, 158, 166
Political partizanship alleged against Lord Ellenborough, 66, 297, 298, 302, 303, 305
Ponsonby, Rt. Hon. G., 197; supports the motion for a Select Committee, 205; opposes Lord Cochrane's motion for a Committee of Inquiry into the conduct of Lord Ellenborough, 248, 249, 311; moves the expunction from the records of the House of proceedings relating to charges against Lord Ellenborough, 255

carried by 'Du Bourg,' 28, 29, 70 and *note* 1, 93, 170, 201, 202, 260, 262, 266, 268, 269, 270, 271, 272
Postboys, 'Du Bourg's' payments to, 10, 12; evidence of one of them before the Stock Exchange Committee, 28; their evidence at the trial, 90–92, 98, 345
Postchaise and four and the pseudo French officers, incident of the, 14, 27, 71, 72, 96–98, 164
Press, the, its conflicting accounts relative to the operations and fortunes of Napoleon, 3–7; its denunciation of the fraud on the Stock Exchange, 15, 16; warned by Lord Castlereagh against reporting libellous statements made by Lord Cochrane, 196; its reports of the trial, 347
Prison, Lord Cochrane's treatment in, 241, 274; his escape from, and re-committal, 241
Prize money, taken by Lord Cochrane, 19; new scale of sharing, 22–24

Qui tam actions against members of the Stock Exchange, 48 and *note* 1, 163 *note* 1

Red Coat, the, alleged to have been worn by 'Du Bourg,' 7, 8, 48, 78, 155 *note* 1; testimony of a postboy, the driver of the hackney-coach, and of others on the subject, 28, 29, 86, 90, 93; conflicting testimony of Lord Cochrane and others, 37, 42, 43, 135, 138, 139, 155 *note* 1, 165, 166 *note* 1, 172, 173, 189, 199, 217, 221, 223, 228, 260, 285, 344, 351
Report of the Committee of the Stock Exchange, 27–31
Restoration of Lord Dundonald to rank and honours, 288, 290
'Review of the Case of Lord Cochrane,' 284–288
Reward offered for the discovery of 'Du Bourg,' 16, 33
Richardson, Mr., one of the counsel for De Berenger, 61, 62, 92, 96, 111
Richardson, Mr. J. M., his evidence before the Stock Exchange Committee respecting Mr. Butt, 31; 104, 105
his evidence at the trial, 86
St. Vincent, Lord, 20, 21 *nota* 1
Sandom, Ralph, 16, 26; one of the pseudo foreigners in the post-chaise from Dartford, 27, 52, 96–98; one of the defendants in the trial, 53; sentence upon him, 190
Scarlett, Mr. (afterwards Lord Abinger), one of the counsel for Lord Cochrane, Cochrane Johnstone, and Butt, 60, 104, 117, 118, 119, 199, 223, 363, 364
Schwartzenburg, General, 2, 4, 6, 11
Secret plan for utilising war material, Lord Cochrane's, 377, 378 and *note*
Select Committee, motion in Parliament (1814) for a, 203; of 1877, 323, 366, 375–379
Semaphore telegraph, 10
Sentence on the defendants, 190
Shepherd, Sir Samuel (Solicitor-General), 205; his review of portions of the evidence at the trial, 208, 209; on the question of Lord Cochrane reading the briefs, 209, 211; on Lord Ellenborough's conduct, 249–251
Sheridan, Richard Brinsley, his hopes of being elected for Westminster, 213
Shorthand writer's notes of the trial, 208 *note* 1; remarks on them by Sir Francis Burdett and the Attorney-General, 210, 211, 347
Signals for conveying news, 15
Smallbone, Mr., stockbroker, his evidence before the Stock Exchange Committee, 30, 31; 74, 103, 115, 231
Smith, William, De Berenger's servant, his affidavit, 49, 69, 79; evidence, 160, 161, 350
Solomon, Mr., his evidence respecting the uniform worn by De Berenger, 78, 94
Spankie, Mr., one of the prosecuting counsel in the Davidson case, 261
Statement read by Lord Cochrane before the full court, 180–183
Steers, James, stockbroker to the Accountant-General of the Court of Chancery, 14 *note* 1, 107
Stock Exchange transactions of the defendants as proved in court, 98–107
Stock Exchange: fluctuations of stocks from February 7th to 19th,

report of Napoleon's death and of its contradiction, 13–15, 71, 72; investigations of the Committee relative to the false report (*see* Committee); limited field for speculation in 1814, 14
Summing-up of Lord Ellenborough, 168–177; criticised by Lord Cochrane, 224, 225, foll.
Surridge, Admiral, 33

Tahourdin, Mr., De Berenger's attorney, 114, 156–158
Time-bargains, 101, 102, and *note* 1
Topping, Mr., one of the counsel for Lord Cochrane, Cochrane Johnstone, and Butt, 61, 103, 199, 228
Torrens, Colonel, evidence of, 153; 313, 314
Townsend, Q.C., Mr., his opinion of Serjeant Best's speech, 142 *note* 1; on Lord Ellenborough's character, 255
Tragear, Henry, evidence of, 162
Transactions on the Stock Exchange, evidence respecting the defendants, 98–107
True bill, finding of the, 53
Turpin, Mary, her statement with regard to De Berenger's coat, 43, 55, 155 *note* 1, 202

Uniform worn by De Berenger, question of the, 7, 8, 28, 29, 37, 42, 43, 48, 78, 86, 90, 93, 94, 135, 138, 155 *note* 1, 158, 159, 161, 165, 166, 172, 173, 199, 201, 217, 221, 223, 259, 262, 268, 287, 344, 351; De Berenger's own statement on the subject, 259, 260 (*see also* Red Coat)
United States, war with, 24

Vinn, Thomas, evidence of, 96, 97

Wade, Mr., Secretary of the Stock Exchange, his evidence relative to the decorations on the uniform, 94, 345
Walpole, Mr. Spencer, 372, 373, 375
Watch sold to De Berenger, payment for, 121
Westminster, constituency of, 18, 24, 206; re-elects Lord Cochrane, 207, 213, 216; addressed by Lord Cochrane, 221
Wetenall, —, official price-taker to the Stock Exchange, 14 *note* 1, 106
Whitbread, M.P., Mr., supports the motion for a Select Committee, 205; on the question of Lord Cochrane reading the briefs, 212
Wilberforce, William, 205, 273, 357
Williams, Mr. C. F., one of the Counsel for Holloway, Lyte, and Sandom, 62
Wood, Alderman, on the altered opinion of the jury after the trial, 215, 216, 307
Wood, Mr. Joseph, his evidence relative to De Berenger, 113, 114, 121
Wortley, M.P., Mr., supports the motion for a Select Committee, 205
Wright, Mr., landlord of the 'Ship Inn,' Dover, 7; his absence at the trial, 85 and *note* 1
Wright, John, his evidence respecting Lord Cochrane's affidavit, 107, 108
Wright, William, innkeeper at Rochester, 'Du Bourg's' conversation with, 10, 11; his evidence at the trial, 90, 91
Wrottesley, M.P., Mr., 205; contests statements made by Lord Cochrane relative to Lord Ellenborough, 208 *note* 1, 346 *note* 1
Wynn, M.P., Mr., 212 *note* 1

Yarmouth, Lord, 36, 39, 75, 76, 150; evidence of, 158, 159, 268, 315; groundless insinuations relative to his connection with the fraud, 315, 316
York, Duke of, Cobbett's attack on, 26

Spottiswoode & Co. Printers, New-street Square, London.

M M

SMITH, ELDER, & CO.'S NEW BOOKS.

THE LETTERS OF ELIZABETH BARRETT BROWNING. Edited, with Biographical Additions, by FREDERIC G. KENYON. In 2 vols. With Portraits. Crown 8vo. 15*s.* net.

DEEDS THAT WON THE EMPIRE. By the Rev. W. H. FITCHETT ('Vedette'). With 16 Portraits and 11 Plans. Crown 8vo. 6*s.*

THE STORY OF THE CHURCH OF EGYPT: being an Outline of the History of the Egyptians under their successive Masters from the Roman Conquest until now. By E. L. BUTCHER, Author of 'A Strange Journey,' 'A Black Jewel,' &c. In 2 vols. Crown 8vo. 16*s.*

THE LIFE OF SIR JOHN HAWLEY GLOVER, R.N., G.C.M.G. By LADY GLOVER. Edited by the Right Hon. Sir RICHARD TEMPLE, Bart., G.C.S.I., D.C.L., LL.D., F.R.S. With Portrait and Maps. Demy 8vo. 14*s.*

THE AUTOBIOGRAPHY OF ARTHUR YOUNG. With Selections from his Correspondence. Edited by M. BETHAM-EDWARDS. With 2 Portraits and 2 Views. Large crown 8vo. 12*s.* 6*d.*

LORD COCHRANE'S TRIAL BEFORE LORD ELLENBOROUGH IN 1814. By J. B. ATLAY. With a Preface by EDWARD DOWSES LAW, Commander, Royal Navy. With Portrait. 8vo. 18*s.*

THE WAR OF GREEK INDEPENDENCE, 1821-1833. By W. ALISON PHILLIPS, M.A., late Scholar of Merton College, Senior Scholar of St. John's College, Oxford. With Map. Large crown 8vo. 7*s.* 6*d.*

TWELVE YEARS IN A MONASTERY. By JOSEPH MCCABE, late FATHER ANTONY, O.S.F. Large crown 8vo. 7*s.* 6*d.*

STUDIES IN BOARD SCHOOLS. By CHARLES MORLEY. Crown 8vo. 6*s.*

FRANCE UNDER LOUIS XV. By JAMES BRECK PERKINS, Author of 'France Under the Regency.' In 2 vols. Crown 8vo. 16*s.*

A BROWNING COURTSHIP; and other Stories. By ELIZA ORNE WHITE, Author of 'The Coming of Theodora' &c. Small post 8vo. 5*s.*

ELIZABETH BARRETT BROWNING'S COMPLETE WORKS. New Edition. In 1 volume. With Portrait and Facsimile of the MSS. of a 'Sonnet from the Portuguese.' Large crown 8vo. bound in cloth, with gilt top. 7*s.* 6*d.*

*** This Edition is uniform with the Two-volume Edition of Robert Browning's Complete Works.

THE GREY LADY. By HENRY SETON MERRIMAN, Author of 'The Sowers,' 'With Edged Tools,' 'In Kedar's Tents,' &c. New Edition. With 12 Full-page Illustrations by ARTHUR RACKHAM. Crown 8vo. 6*s.*

MARCELLA. By Mrs. HUMPHRY WARD. Cheap Popular Edition. Crown 8vo. bound in limp cloth. 2*s.* 6*d.*

FRIENDSHIP'S GARLAND. By MATTHEW ARNOLD. Second Edition. Small crown 8vo. bound in white cloth. 4*s.* 6*d.*

POT-POURRI FROM A SURREY GARDEN. By Mrs. C. W. EARLE. With an Appendix by Lady CONSTANCE LYTTON. Seventh Edition, large crown 8vo. 7*s.* 6*d.*

THE RENAISSANCE IN ITALY. By JOHN ADDINGTON SYMONDS. New and Cheaper Edition in 7 vols. large crown 8vo. with 2 Portraits.

1. THE AGE OF THE DESPOTS. With a Portrait, 7*s.* 6*d.*
2. THE REVIVAL OF LEARNING. 7*s.* 6*d.*
3. THE FINE ARTS. 7*s.* 6*d.*
4 and 5. ITALIAN LITERATURE. 2 vols., 15*s.* [*In December.*
6 and 7. THE CATHOLIC REACTION. With a Portrait and an Index to the 7 vols., 15*s.* [*In the press.*

ENGLISH SANITARY INSTITUTIONS Reviewed in their Course of Development and in some of their Political and Social Relations. By Sir JOHN SIMON, K.C.B., D.C.L. Oxford; LL.D. Camb. and Edin.; M.D. Hon., Dublin; M. Chir. D. Hon., Munich; Consulting Surgeon and Past Senior Surgeon to St. Thomas's Hospital; formerly the Medical Officer of Her Majesty's Privy Council; and lately a Crown Member of the General Medical Council, &c. Second Edition, demy 8vo. 18*s.*

ELECTRIC MOVEMENT IN AIR AND WATER. With Theoretical Inferences. By Lord ARMSTRONG, C.B., F.R.S., LL.D., &c. With Autotype Plates. Imperial 4to. £1. 10*s.* net.

'One of the most remarkable contributions to physical and electrical knowledge that have been made in recent years. . . . The illustrations are produced in a superb manner, entirely worthy of so remarkable a monograph.'—TIMES.

London: SMITH, ELDER, & CO., 15 Waterloo Place, S.W.

GABRIELE VON BULOW, Daughter of Wilhelm von Humboldt. A Memoir compiled from the Family Papers of Wilhelm von Humboldt and his Children, 1791–1887. Translated by CLARA NORDLINGER. With Portraits and a Preface by Sir EDWARD B. MALET, G.C.B., G.C.M.G. &c. Demy 8vo. 16s.

'Miss Nordlinger's excellent translation gives English readers an opportunity of becoming acquainted with a very charming personality, and of following the events of a life which was bound up with many interesting incidents and phases of English history.'—TIMES.

ISABELLA THE CATHOLIC, QUEEN OF SPAIN: her Life, Reign, and Times, 1451–1504. By M. LE BARON DE NERVO. Translated from the Original French by Lieut.-Colonel TEMPLE WEST (Retired). With Portraits. Demy 8vo. 12s. 6d.

'Neither too long nor too short, not overladen with detail nor impoverished from lack of matter, and is at the same time ample and orderly enough to satisfy the ordinary student.'—DAILY TELEGRAPH.

THACKERAY'S HAUNTS AND HOMES. By EYRE CROWE, A.R.A. With Illustrations from Sketches by the Author. Crown 8vo. 6s. net.

☞ NOTE.—The Edition of the Work for sale in this country is limited to 260 copies.

THE ANNALS OF RURAL BENGAL. From Official Records and the Archives of Native Families. By Sir W. W. HUNTER, K.S.C.I., C.I.E., LL.D., &c. New, Revised, and Cheaper Edition (the Seventh). Crown 8vo. 7s. 6d.

'One of the most important as well as most interesting works which the records of Indian literature can show.'—WESTMINSTER REVIEW.

FROM GRAVE TO GAY: being Essays and Studies concerned with Certain Subjects of Serious Interest, with the Puritans, with Literature, and with the Humours of Life, now for the first time collected and arranged. By J. ST. LOE STRACHEY. Crown 8vo. 6s.

'Undeniably clever, well-informed, brightly written, and in many ways interesting.'—TIMES.

COLLECTED CONTRIBUTIONS ON DIGESTION AND DIET. With an Appendix on the Opium Habit in India. By Sir WILLIAM ROBERTS, M.D., F.R.S. Second Edition. Crown 8vo. 5s.

SIR CHARLES HALLÉ'S LIFE AND LETTERS. Being an Autobiography (1819–1860), with Correspondence and Diaries. Edited by his Son, C. E. HALLÉ, and his Daughter. MARIE HALLÉ. With 2 Portraits. Demy 8vo. 16s.

'The volume is one of the most interesting of recent contributions to the literature of music. . . . A strong sense of humour is manifest in the autobiography as well as in the letters, and there are some capital stories scattered up and down the volume.'—TIMES.

THE MEMOIRS OF BARON THIÉBAULT (late Lieutenant-General in the French Army). With Recollections of the Republic, the Consulate, and the Empire. Translated and Condensed by A. J. BUTLER, M.A., Translator of the 'Memoirs of Marbot.' 2 vols. With 2 Portraits and 2 Maps. Demy 8vo. 28s.

'Mr. Butler's work has been admirably done. . . . These Memoirs abound in varied interest, and, moreover, they have no little literary merit. . . . For solid history, bright sketches of rough campaigning, shrewd studies of character, and lively anecdote, these Memoirs yield in no degree to others.'—TIMES.

PREHISTORIC MAN AND BEAST. By the Rev. H. N. HUTCHINSON, Author of 'Extinct Monsters,' 'Creatures of Other Days,' &c. With a Preface by Sir HENRY HOWORTH, M.P., F.R.S., and 10 Full-page Illustrations. Small demy 8vo. 10s. 6d.

'A striking picture of living men and conditions as they once existed. . . . It combines graphic description with scientific accuracy, and is an admirable example of what a judicious use of the imagination can achieve upon a basis of established facts.'—KNOWLEDGE.

A YEAR IN THE FIELDS. Selections from the Writings of JOHN BURROUGHS. With Illustrations from Photographs by CLIFTON JOHNSON. Crown 8vo. 6s.

'The book is an excellent example of its kind, pleasant, chatty, and readable. . . . Fresh and graphic, instinct with country sights, scents, and sounds'—LAND AND WATER.

'The book is pleasant reading, and Mr. Burroughs is a true lover of Nature.'—ATHENÆUM.

SELECTED POEMS OF WALTER VON DER VOGELWEIDE THE MINNESINGER. Done into English Verse by W. ALISON PHILLIPS, M.A., late Scholar of Merton College, and Senior Scholar of St. John's College, Oxford. With 6 Full-page Illustrations. Small 4to. 10s. 6d. net.

'There is in the outpourings of the famous Minnesinger a freshness and a spontaneity that exercise an irresistible charm. . . . Mr. Phillips deserves thanks from all lovers of poetry for bringing him before the world again in so acceptable a form.'—TIMES.

A HISTORY OF THE HEBREW PEOPLE FROM THE DIVISION OF THE KINGDOM TO THE FALL OF JERUSALEM IN 586 B.C. By CHARLES FOSTER KENT, Ph.D., Associate-Professor of Biblical Literature and History, Brown University. With Maps and Chart. Crown 8vo. 6s.

*** This Second Volume completes the Work.

London: SMITH, ELDER, & CO., 15 Waterloo Place.

3 6105 044 060 767